



CONTRACT FOR DESIGN/BUILD PASSENGER FERRY VESSELS

BY AND BETWEEN

REGIONAL TRANSIT AUTHORITY

A Political Subdivision of the
State of Louisiana
2817 Canal St.
New Orleans, Louisiana 70119

AND

GRAVOIS ALUMINUM BOATS, LLC

d/b/a METAL SHARK BOATS

6814 E. Admiral Doyle Drive
Jeanerette, Louisiana 70544

Regional
Transit
Authority

2817 Canal Street,

New Orleans,

Louisiana

70119-6301

Administration

504.827.8300

- | | |
|---------------------------|--|
| A. SCOPE OF WORK: | Professional Services, as specified, herein. |
| B. CONTRACT PRICE: | As specified herein. |
| C. PERIOD OF PERFORMANCE: | As specified herein. |
| D. NOTICE TO PROCEED | As specified herein. |

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EXHIBITS

EXHIBIT "1"	RTA Request For Proposals (RFP) #2016-007.
EXHIBIT "2"	Contractor's Proposal
EXHIBIT "3"	Detailed Cost Proposal
EXHIBIT "4"	Notice to Proceed
EXHIBIT "5"	Milestone Payment Schedule
EXHIBIT "6"	General Conditions

WHEREAS, Contractor, a Limited Liability Company, submitted a Proposal in response to Exhibit "1", RTA RFP No. 2016-007, attached hereto, made a part hereof and designated as Exhibit "2", Contractor's Proposal dated, September 9, 2016, and attached hereto; and

WHEREAS, Contractor's proposal was determined to be fair, reasonable, and responsive for the required services.

NOW, THEREFORE, IN CONSIDERATION of the promises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. SUPERSEDING EFFECT

This Agreement supersedes all prior oral or written Agreements, if any, between the parties and constitutes the entire Agreement between the parties relative to the work to be performed under this Agreement. Any changes or modifications to this Agreement shall be accomplished solely by written amendment signed by both parties.

II. SCOPE OF SERVICES

Contractor shall provide Design and Build (2) Passenger Ferry Vessels and any other service required in compliance with the terms and conditions set forth in Exhibit "1", RTA RFP No. 2016-007; Exhibit "2", Contractor's Proposal; Exhibit "3", Detailed Cost Proposal and Exhibit "4", Notice To Proceed, issued by RTA to Contractor (the "Project"). Contractor agrees that all work under this Agreement shall be performed in a professional timely manner and shall conform to or exceed in all respects the prevailing industry standards.

III. COMPENSATION, PAYMENT, AND ACCELERATION

A. COMPENSATION

The RTA will compensate Contractor for professional services to be performed under this Agreement, as specified in this Agreement and pursuant to Exhibit "1", RTA RFP No. 2016-007. The compensation due Contractor shall not exceed \$10,715,000.00, including acceleration compensation, unless properly authorized.

B. PAYMENT

RTA will make payment to Contractor upon completion and acceptance of the work in accordance with the Milestone Payment Schedule, attached hereto as Exhibit 5.

C. ACCELERATION

RTA desires to expedite construction on this Contract. In order to achieve this, RTA has agreed to pay Contractor an additional \$750,000.00, which is included in the Compensation set forth in section IIIA, and Contractor has agreed to a delivery date of March 21, 2018 . .

IV. TERM OF AGREEMENT

This Agreement shall be deemed effective on the date first above written and shall continue in effect until the certification by RTA or its agents that the requirements of this Agreement have been satisfactorily completed by Contractor, or;

The termination of this Agreement as provided in Article V, herein below. The duration of this Agreement may be extended by mutual agreement of the parties.

V. TERMINATION

Termination under this Agreement shall be in accordance with Exhibit 6 _____, General Conditions, Section 8.7, Termination.

VI. INTEREST OF CONTRACTOR

Contractor covenants that it currently has no interest and shall acquire no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Agreement. RTA and Contractor further covenant that in the performance of this Agreement no persons having any such interest shall be employed.

VII. IDENTIFICATION OF DOCUMENTS

Any document, memorandum or report prepared under this Agreement for publication and not merely for internal use shall contain the following or a similar stipulation deemed acceptable to the RTA:

- A. The preparation of this document has been financed in part through a grant from the United States Department of Transportation under the provisions of the Urban Mass Transportation Act of 1964, as amended.
- B. The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of RTA or the United States Department of Transportation, Federal Transit Administration.

VIII. OWNERSHIP OF DOCUMENTS

All documents, reports or data generated by the Contractor and directly related to this Agreement or provided to Contractor under this Agreement shall be the sole property of RTA for a period of up to three years after acceptance of the work. Contractor shall not use any such documents, reports or data for any purpose other than to perform services pursuant to this Agreement without written consent of the RTA.

IX. APPLICABLE LAW

This Agreement shall be entered into the State of Louisiana and shall be governed and/or construed in accordance with the laws and jurisprudence of the State of Louisiana.

X. NOTICES

Any notice required or permitted under the Agreement shall be either hand delivered to the party to whom the notice is directed or sent to same by certified mail, return receipt requested, and addressed as follows:

REGIONAL TRANSIT AUTHORITY

2817 Canal Street
New Orleans, Louisiana 70119

ATTN: JUSTIN T. AUGUSTINE III
Vice President – Transdev Services Inc.

ATTN: CAROLINE REGISTER
Director of Procurement

GRAVOIS ALUMINUM BOATS LLC d/b/a METAL SHARK BOATS

6814 E Admiral Doyle Drive
Jeanerette, Louisiana 70544

ATTN: CHRIS ALLARD
President

ATTN: GREG LAMBRECHT
Executive Vice President

XI. PATENT

If any invention, improvement, or discovery of the Contractor or of any subcontractor, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any
Regional Transit Authority

foreign country, the Contractor agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

XII. DOCUMENTS INCORPORATED BY REFERENCE

The following documents are hereby incorporated by reference:

EXHIBIT "1"	RTA Request For Proposals (RFP) #2016-007.
EXHIBIT "2"	Contractor's Proposal
EXHIBIT "3"	Detailed Cost Proposal
EXHIBIT "4"	Notice to Proceed
EXHIBIT "5"	Milestone Payment Schedule
EXHIBIT "6"	General Conditions

Service Contract Act Wage Determination No: 2015-5177 Dated 02/22/2017

XIII. ORDER OF PRECEDENCE

The following order of precedence shall govern in the event of a conflict between documents of this contract.

- A. Contract/Change Orders
- B. General Conditions (Prepared by RTA)
- C. RTA's Requirements (as indicated in RFP 2016-007)
- D. Technical Specifications (Prepared by Contractor)
- E. Contract Drawings (Prepared by Contractor)
- F. Proposal Design Package other than Specifications and Drawings (Prepared by Contractor)

XIV. RETAINAGE

Five (5%) percent of the value of each Contractor invoice for construction only shall be withheld until final completion and acceptance of all work, as determined by the RTA.

XV. INSURANCE

To protect RTA against liability in connection with, or resulting from the carrying out of this Agreement, Contractor shall provide, before the work is commenced hereunder, and shall at all time during the life of the Agreement carry at the expense of the Contractor, with reliable insurance companies acceptable to RTA and approved to do business in the State of Louisiana, the insurance described in Exhibit 6, General Conditions, at Paragraph 7.4.3, "Insurance."). For protection of the RTA, Transdev Services Inc., and LADOTD, such insurance shall name RTA, Transdev Services Inc., and LADOTD as additional insured, Contractor shall provide a waiver of subrogation as to RTA, Transdev Services Inc., and LADOTD and shall provide that the waiver of subrogation cannot be canceled or changed without **thirty (30) days prior** notice to RTA. The Contractor shall deliver to RTA a Certificate of Insurance when required. The RTA reserves the right to reject any policy obtained in connection with this Agreement, and, if such policy is rejected, the Contractor shall obtain the required insurance from another insurer. The RTA shall not unreasonably exercise such right to rejection. Neither the existence of required insurance nor the assent of the RTA to the types and amounts of insurance carried by the Contractor shall be construed as waiving or releasing any of the Contractor's liabilities or responsibilities.

The Contractor shall furnish to RTA Certificates showing types, amounts, class of operations covered, effective dates, and dates of expiration of policies for Worker's Compensation Insurance as required by applicable Louisiana Law.

XVI. DBE COMPLIANCE POLICY

It is the policy of the RTA to ensure access to the economic opportunity the agency offers in a manner that is fair and equitable and that affords participation to all citizens regardless of race, gender, ethnicity, age, religious background, sexual orientation and disability. Accordingly, the RTA's DBE Program is designed to increase small and disadvantaged business participation in RTA contracts and procurements. The growth and development of small and disadvantaged

businesses is important to the New Orleans regional economy. The RTA works to support that growth and development, in part, by providing business opportunities under its DBE Program.

Legal Authority.

The RTA is a recipient of federal transit funds from the U.S. Department of Transportation Federal Transit Administration (FTA). As a condition of receiving this federal funding, RTA is legally required to establish and maintain a DBE program in compliance with Title 49 of the U.S. Code of Federal Regulation, Part 26 (49 CFR Part 26).

Non-Discrimination.

The Contractor shall not discriminate on the basis of race, color, religion, sex, age, national origin, or disability in the performance of this Agreement.

DBE Participation.

Contractor shall count only the value of the work actually performed by its DBE subcontractor toward attainment of the 14% DBE goal. Contractor shall also ensure that any work that its DBE subcontractor has subcontracted to a non-DBE firm does not count toward attainment of the 14% DBE goal. Finally, Contractor shall ensure that any fees or expenses paid to its DBE subcontractor are only counted toward attainment of the 14% DBE goal if the DBE subcontractor is performing a commercially useful function under this Agreement.

Prompt Payment of Subcontractors.

Contractor shall pay each subcontractor under this Agreement, especially DBE firms, no later than **five (5) business days** from the receipt of each payment Contractor receives from the RTA. Contractor further agrees to return retainage payments to each subcontractor, especially DBE firms, within **five (5) business days** after the subcontractor's work is satisfactorily

completed and accepted by the RTA, and all delays under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause, following written approval of the RTA.

DBE Contract Termination.

Contractor shall not terminate for convenience the contract of its DBE subcontractor and subsequently perform the work of the terminated DBE subcontractor with its own forces or those of an affiliate, without prior written consent from the RTA. In addition, if a DBE subcontractor is justifiably terminated, or fails to complete its work for any reason, Contractor must make good faith efforts (also referred to as best efforts) to find another certified DBE firm to substitute for the original DBE subcontractor. The good faith efforts must be directed towards finding a substitute DBE subcontractor to perform at least the amount of work needed to meet the DBE goal.

Contractor Assurance.

The Contractor, subcontractor or sub-recipient (for purposes of this section only, collectively referred to as "Contractor") shall not discriminate on the basis of race, color, national origin, sexual orientation, age or disability in the performance of this Agreement. Additionally, the Contractor must comply with all requirements of the RTA DBE Program as authorized by the Code of Federal Regulations 49 CFR Part 26. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which shall result in such remedy as the RTA deems appropriate and may include the termination of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

out these requirements is a material breach of this Agreement, which shall result in such remedy as the RTA deems appropriate and may include the termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals in the presence of the undersigned competent witnesses.

ATTEST:

Celia C. Mayer
Dennis Battaglia

REGIONAL TRANSIT AUTHORITY

Sharonda R. Williams
Sharonda R. Williams
Chairwoman of the Board of Commissioners

Paula Traban
Angela Noel

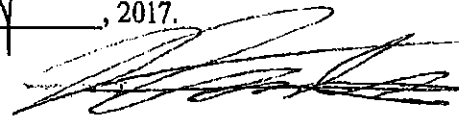
GRAVOIS ALUMINUM BOATS

Chris Allard
Chris Allard
President

Certification by Officer of Gravois Aluminum Boats, LLC d/b/a Metal Shark Boats

Approved as to legal form and adequacy and as to the authorization of the signatory hereto on behalf on the date herein above shown.

Dated this 19th day of MAY, 2017.

A handwritten signature in black ink, appearing to be "CPD", written over a horizontal line.

Signature

The handwritten letters "CPD" in black ink, positioned above a horizontal line.

Title

ACKNOWLEDGMENT

STATE OF Louisiana
PARISH/COUNTY OF Lafayette

ON THIS 19th day of May, 2017 before me, appeared Chris Allard, to me personally known, who being by me duly sworn, did say that he is the President of Gravois Aluminum Boats, LLC, d/b/a Metal Shark Boats and that this Agreement was signed on behalf of said Company by authority of its said appearer and acknowledged said instrument to be the free act and deed of Gravois Aluminum Boats, LLC.

IN WITNESS WHEREOF I have hereunto set my official hand and seal on the date above written.


NOTARY PUBLIC IN AND FOR

PARISH (COUNTY), STATE

SHELLY BRUMBAUGH

ID# 84741

LAFAYETTE PARISH
LIFETIME COMMISSION

ACKNOWLEDGMENT

STATE OF LOUISIANA

PARISH/COUNTY OF ORLEANS

ON THIS 22nd day of May, 2017 before me, appeared Sharonda R. Williams to me personally known, who being by me duly sworn, did say that she is the Chairwoman of the Board of the Regional Transit Authority (RTA), a political subdivision of the State of Louisiana, and that the attached Agreement was signed on behalf of the RTA by authority of its Board of Commissioners, and said appearer acknowledged said instrument to be the free act and deed of the RTA.

IN WITNESS WHEREOF I have hereunto set my official hand and seal on the date above written.



NOTARY PUBLIC IN AND FOR
ORLEANS PARISH, LOUISIANA



EXHIBIT 6

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SECTION 1. DEFINITIONS AND TERMS

1.1 GENERAL

Wherever the following abbreviations are used in the Contract Documents, they are to be construed the same as the respective expression represented:

1.2 ABBREVIATIONS

ADA – Americans with Disabilities Act

AIS – Automated Identification System

AISI – American Iron & Steel Institute

ANSI – American National Standard Institute

ASTM – American Society for Testing & Materials

CFR – Code of Federal Regulations

NTP – Notice to Proceed

QA/QC – Quality Assurance/Quality Control

UL – Underwriters Laboratory

USC – United States Code

USCG – United States Coast Guard

USPHS – United States Public Health Service

References to "§" numbers in the General Conditions shall refer to the sections or subsections of the General Conditions unless otherwise noted.

1.3 DEFINITIONS

As used in the Contract Documents, the following terms, whether lower-cased or capitalized, shall have the following meanings unless otherwise specified.

Addendum / Addenda. Clarifications, corrections or changes to the Contract Documents issued graphically or in writing by the RTA after the advertisement.

Approval. See § 3.14.

Approval of Contract. The execution of the required Contract Documents by both parties.

At the Contractor's Expense. "At the Contractor's expense" means that the Contractor shall receive no amounts in addition to the Contract Price and shall not be entitled to adjustment of the Contract Price.

Authorized Representative. See RTA's Representative.

Award. The acceptance by the RTA of the successful proposal. The award is effective upon execution of the Contract by the RTA.

Baseline Weight Estimate. The weight and center of gravity estimate of the Vessels as submitted by Contractor. The Baseline Weight Estimate shall include combinations of the loads and margins as outlined in the RTA's Requirements.

Bid. Although the term "bid" may appear for convenience in some Contract provisions, it is to be understood that this is not a conventional procurement where evaluation to award the Contract is based solely on price. Where the term is used it shall be considered synonymous with "proposal."

Bidder. Although the term "bidder" may appear for convenience in some Contract provisions, it is to be understood that this is not a conventional procurement where evaluation to award the Contract is based solely on price. Where the term is used it shall be considered synonymous with "Offeror" or "Proposer."

Builder. The Contractor.

Calendar Day. Every day shown on the calendar beginning and ending at midnight.

Certified Payroll. Certified payroll shall consist of name, last four digits of employee social security number or employee ID number, and address of each employee, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

Change Order. A written order by the RTA covering changes to the Contract, within its general scope, and establishing the basis of payment and time adjustment, if any, for the Work affected. For further definition, see § 6.

Composite Straight Time Hourly Rate. The current hourly rate established, based on direct salary cost, fringe benefits, general overhead and profits. Fringe benefits include, but are not limited to, FICA, employment security, life insurance, medical and dental insurance, and pension and profit sharing.

Construction Time. See § 8.3.

Contract. The written agreement between the RTA and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, furnishing of labor, provision of materials, and the basis of payment.

Contract Completion Date. The date, on which all conditions of the Contract are satisfied, including expiration of the Warranty Period.

Contract Design. A term used to describe all documents, taken together, that are required to build the Vessels.

Contract Documents. The Contract Documents are defined in § 3.16 of the General Conditions.

Contract Drawings. Those design drawings developed by the Contractor to build the Vessels, and that illustrate some, but not necessarily all, features and arrangements of the Vessels to be implemented by the Contractor. Any departure from these drawings, and every revision thereof, must be specifically approved in writing by the RTA.

Contract Item (Pay Item). A specially described item of Work for which a price is provided in the Contract.

Contract Price. The final accepted Price Proposal plus any adjustments to the same as a result of Change Orders.

Contract Time. See § 8.3.

Contractor. The individual, partnership, firm, corporation, or any acceptable combination thereof, is contracting with the RTA for performance of prescribed Work, acting directly or through agents and employees.

Contractor's Representative. The Contractor's authorized representative, who shall have the authority to execute change orders and directions of the RTA or their RTA's Representative. The Contractor shall at all times have a Contractor's Representative, designated in writing by the Contractor to the RTA, or person acting as a Contractor's Representative in the absence of a regular Contractor's Representative, which person shall be available during each working day to communicate with the RTA or their RTA's Representative.

Contractor's Trials. Establish readiness for RTA's Acceptance Trials for the Vessels. See § 3.20.

Critical Path. The sequence of schedule activities that determine the duration of the project. Resources and manpower are allocated by the Contractor for specific items listed on the critical path portion of the Project Schedule in order to keep the project moving forward for on time delivery of the Vessels.

Days. Unless otherwise noted, any reference to "days" shall be interpreted as "calendar days."

Defect. Another term for deficiency.

Deficiency. Any characteristic of the Work that is not in accordance with the requirements of the Contract, or failure of the Vessels to operate or perform in accordance with the requirements of the Contract.

Delivery Acceptance. The written acceptance by the RTA of the Vessels from the Contractor, with attendant transfer of custody of the Vessels from the Contractor to the RTA. See § 3.21.

Delivery Acceptance Survey. The survey required prior written acceptance by the RTA of the Vessels from the Contractor. See § 3.21.

Design. The graphic depictions, specifications, calculations, and necessary to plan and construct all forms and functions of the Vessels, including, but is not limited to, all necessary engineering.

Directive. A written communication to the Contractor from the RTA enforcing or interpreting a Contract requirement or ordering commencement or suspension of an item of Work.

Discrepancy Report. Report generated by either the Contractor or the RTA upon either receipt or acceptance documenting variance from the terms and conditions of the agreement, contract, or specifications.

Dispose. Scrap or throwaway off the Vessels, in a manner conforming to applicable law, as unwanted material.

Dock Trials. Verification that equipment and systems perform satisfactory and establish readiness for Contractor's Trials for the Vessels. See § 3.10.

Equipment. All machinery together with the necessary supplies for upkeep and maintenance, and also tools and any apparatus necessary for the proper construction and acceptable completion of the Work.

Extra Work. An item of Work not provided for in the Contract as awarded but found essential by the RTA for the satisfactory completion of the Contract within its intended scope and for which a Change Order is required.

Final Acceptance. See § 3.22.

Final Payment. Payment to Contractor following Final Acceptance. See § 9.6.

Fit. Item installed by the Contractor in space allocated and/or templated from the Vessels.

Furnish. To supply or produce and deliver to the construction site and to unload and unpack ready for assembly, installation, testing, and start-up.

General Conditions. General Conditions Sections 1-10, including attachments, which contain contractual language and guidance for the Vessels construction Contract.

Good Shipbuilding Practice. The term "good shipbuilding practice" refers to those soundly conceived and engineered details, plans, and practices which have proven to be effective and reliable in the maritime industry for seaworthy Vessels of the type ordered under this Contract, which shall meet the details and performance requirements of the Contract, and/or which are required to obtain and/or maintain USCG Code certifications or Classification Society certifications. However, approval by USCG does not imply acceptance by the RTA, nor does it necessarily mean "good shipbuilding practice."

Inspector(s). The RTA authorized representative(s) assigned to make inspections of Contract performance.

Install. To make ready on board the Vessels for the RTA to use, including assembly, erection, placing, anchoring, applying, shaping to dimension, finishing, curing, and cleaning.

Installation Drawings. As-built drawings.

Machinery. All electrical, mechanical, hydraulic, or air or gas powered mechanisms on the Vessels, with or without moving parts, which convert or use energy to perform any function or convey any information, sound, image or control.

Material. All physical substances, components, or instrumentalities of whatever composition necessary to fully construct the Vessels, whether or not incorporated into the final form of the Vessels.

Material/Equipment List. The bill of material "list" reflecting the product as designed by engineering, includes all physical substances, components, or instrumentalities of whatever composition necessary to fully construct the Vessels, whether or not incorporated into the final form of the Vessels.

Notice to Proceed. Written notice to the Contractor to begin the Work and establishing the date on which the count of time begins.

Operational Acceptance Survey. Prerequisite survey for the Vessels prior to being delivered to the RTA.

Or Equal (or equivalent). An item of material approved in accordance with § 5.6 for substitution in place of a brand name item specified in the RTA's Requirements, Technical Specifications, and/or Contractor's Proposal drawings, or Contractor's Materials/Equipment List.

Outfitting. All fittings joiner work, cabinetry, storage bins, seating, floor coverings, insulation, systems, spare parts, tools, lifesaving appliance, etc., either fixed or movable, that do not convert or use energy, and are necessary to complete the Vessels under this Contract.

RTA. The RTA may delegate any of its authority to one or more authorized representatives. Such delegation shall be provided to the Contractor in writing and will outline the specific scope of authority that the authorized representative has been granted.

RTA's Acceptance Trials. Prerequisite for the Vessels prior to being delivered to the RTA. The operational acceptance survey is conducted during the Acceptance Trials. See § 3.20.

RTA's Representative. Reference to the RTA's Representative shall mean the RTA's Authorized Representative. The RTA's Representative will have the exclusive authority to issue and approve change orders and applications for payment. Such designation shall be conveyed in writing and addressed to the Contractor by the RTA and shall identify a specific person or entity and those duties assigned. The RTA's Representative also has the authority to designate certain individuals as Technical Representatives for the Project. Technical Representatives shall have no authority to issue or approve change orders or applications for payment.

RTA's (or RTA) Requirements. "RTA's Requirements for the Design and Construction of the Vessels." This document delineates minimum functional, performance, and technical requirements of the Work. The RTA's Requirements shall be provided to qualified shipyards for development of the Contract Design.

Performance and Payment Bond. The security furnished by the Contractor and its surety to guarantee performance and completion of the Work in accordance with the Contract.

Plans or Drawings. The plans, drawings and supplemental drawings or reproductions thereof, which show the location, character, dimensions, and details of the Work to be done. "Plans" or "drawings" are developed by the Contractor.

Post-Construction Services. All Work or obligations under this Contract that may be performed after Delivery, including but not limited to warranty work, final payment and close-out activities.

Project. The Vessels, together with all appurtenances, the design to be provided therefore, and construction to be performed thereon under the Contract.

Project Schedule. The Contractor-produced and RTA-approved cost and resource loaded schedule for the entire Project inclusive of the original baseline schedule and all approved updates. All other schedules for the Project are subdivisions of the Project Schedule. The Project Schedule is the Contractor's committed plan to complete all Work within the Contract Time. The completed Project Schedule shall define the operations required to bring the entire Work to final acceptance by the Contract Completion Date. See § 4.

Proposal. The offer of a prospective Contractor (Offeror), on the prescribed form, to perform and complete the Work at the prices quoted.

Proposal Design Package. The drawings, technical specifications and other documents which encompass the body of work representing the Proposer's offered Vessels for construction which is submitted at the time of the Proposal.

Proposal Evaluation Committee. RTA representatives designated to review the Technical and Price Proposals.

Proposer. Shall mean the same as Respondent.

Provide. When used with reference to the Contractor's duty, "provide" means to design (see definition), to purchase, to manufacture, to produce, as appropriate, and to install in an acceptable and satisfactory working manner, and to supply all materials, equipment, tools and labor to perform specified Work.

Regulatory Authority. Any international or governmental agency, organization, or convention having regulatory jurisdiction over any element of the contracted Work.

Regulatory Body. Shall mean the same as Regulatory Authority.

Request for Proposals (RFP). The body of information or package requesting proposals for all materials and Work encompassed in the Project.

Respondent. An individual, firm, corporation, or any acceptable combination thereof, or joint venture submitting a proposal for the advertised Work.

ROM. Rough order of magnitude.

Special Provisions (FTA). Supplemental Provisions to the RTA's General Conditions, which will be incorporated into the contract.

Specifications. "Specifications" is a general term applied to all directions, provisions, and requirements pertaining to performance of the Work. Where the term "Specifications" is used, it shall mean the particular set of specifications required to be developed by the Contractor in accordance with the RTA's Requirements and other provisions of the Contract.

Structure. All material forming the hull, superstructure, deckhouses, fixed masts, integral tanks and foundations.

Subcontractor. An individual, partnership, firm, corporation, or any acceptable combination thereof to which the Contractor sublets part of the Contract.

Supplier/Vendor. An individual or organization furnishing supplies, materials, machinery or services to the Contractor necessary to accomplish Work ordered under the Contract.

Surety. A corporation, partnership or individual, other than the Contractor, executing a bond furnished by the Contractor.

Technical Response. The Technical Response consists of all documents required to be submitted pursuant to the Request for Proposal.

Technical Representative. Individuals designated as such by the RTA's Representative for purposes of conducting inspections, documenting work and other on-site duties as directed. Technical Representatives shall have no authority to issue or approve change orders or applications for payment.

Vessels. The new passenger ferries to be designed and built under this procurement. Except as noted, any reference to the singular "Vessels" is intended to be equally applicable to both Vessels.

Vessels Documentation. All documents required by law, regulation or classification to be onboard in order to operate in its intended service including any additional documentation required to be onboard as described in the RTA's Requirements.

Warranty Survey. A final warranty survey of the Vessels shall be conducted at the expiration of the Warranty Period, or as soon thereafter as the RTA shall deem practicable, but no later than three (3) months after the expiration of such Warranty Period. Such survey shall be based on the defective workmanship and defective material in the contract work appearing or discovered during the Warranty Period.

Work. Work shall mean the furnishing of all design (including engineering), labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract.

SECTION 2. SCOPE OF WORK

2.1 SCOPE AND INTENT OF CONTRACT

The Contractor is to provide the design, construction and completion of every detail of the work described and reasonably inferred from the Contract Documents for the complete and functional Vessels. The Contractor shall furnish all facilities, labor, management, materials, equipment, tools, services, power, transportation, and supplies required to complete the work in accordance with the terms of the Contract.

The RTA shall retain the right to make use of the Proposal Design Package, the Contract Drawings and/or the Detail Design Drawings for the purpose of Vessels repairs and modifications only or as otherwise provided for in this Contract.

The requirements cited in Regulatory Body publications must be met in order to obtain the Regulatory Body approvals and certifications required by the Contract. These requirements are not in general repeated in the Contract. The Contract does not address peculiar requirements that may be imposed by the Regulatory bodies relative to the design and construction details and methods selected by the Contractor for this particular Vessels, though conformance with all such requirements is required within the scope of this Contract.

The Contractor agrees and warrants, by entering into this Contract, that every aspect of work associated with the design and construction of this work, including, but not limited to, attendant detail design, construction, materials and deliverables, shall conform in every material respect to the RTA's Requirements, as amended pursuant to this Contract, and to applicable Regulatory requirements.

Time is of the essence in performing this Contract.

The Regional Transit Authority (RTA) and the Louisiana Department of Transportation and Development (LADOTD) entered into Cooperative Endeavor Agreement (CEA) for Ferry Service. The CEA provides Federal and State Funds for the Purchase of Ferry Boats and Terminal Improvements. Louisiana Revised Statutes 2225.2.5.

SECTION 3. ADMINISTRATION OF CONTRACT

3.1 AUTHORITY OF THE RTA

- A. Unless the RTA, in writing, indicates otherwise, the authority to (1) commit to or bind the RTA to any Change Orders or change in Contract Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the Regional Transit Authority Executive or its designee.
- B. The RTA shall identify the RTA's Representative in the Contract prior to Contract Execution.
 - 1. The RTA's Representative shall provide the Contractor with a written Notice of delegation of authority, which identifies the person who has authority to sign Change Orders and/or bind the RTA to changes in Contract Work, Contract Price, and Contract Time.
 - 2. In the event the RTA's Representative is no longer assigned to the Contract, the RTA shall notify the Contractor in writing of the change providing the name of the new RTA's Representative and effective date of the change.
- C. The RTA's Representative shall have the authority to administer the Contract. Administration of the Contract by the RTA's Representative includes but is not limited to:
 - 1. Receiving all correspondence and information from the Contractor;
 - 2. Issuing Field Directives;
 - 3. Issuing request for Change Proposals;
 - 4. Responding to Requests for Information;
 - 5. Reviewing the project schedules, submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Contractor;
 - 6. Negotiating Change Proposals and Change Orders;
 - 7. Recommending Change Orders for approval by the Regional Transit Authority Executive or its designee;
 - 8. Issuing decisions with respect to Requests for Change Orders and Claims;
 - 9. Processing payment requests submitted by the Contractor, and recommending payment;
 - 10. Monitoring the quality of the work, rejecting noncompliant work, and recommending acceptance of the work;
 - 11. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor, and

12. Performing all other contract administrative functions.
- D. All correspondence, questions, and/or documentation shall be submitted to the RTA's Representative.
- E. The RTA's Representative may designate Technical Representatives to perform functions under the Contract, such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical or administrative nature.
1. The RTA's Representative will provide a written Notice of its designation to the Contractor. The designation letter will set forth the authority of the Technical Representatives under the Contract.
 2. The RTA's Representative may add to or modify in writing these designations from time to time.
 3. The RTA's Representative cannot grant a Technical Representative greater authority than the authority of the RTA's Representative.
- F.
- G. The RTA's inspection during design and construction of the Vessels shall not relieve Contractor of its obligation to perform all Work in full accordance with the Contract.
- H. The RTA may, at reasonable times, and with at least 24 hours' advance written notice, inspect that part of the plant or place of business of the Contractor or subcontractor that is related to the performance of the Contract.
- I. The RTA may request Contractor support during an audit in accordance with § 3.25.
- J. The RTA may delegate any of its authority to one or more authorized representatives. Such delegation shall be provided to the Contractor in writing and will outline the specific scope of authority that the authorized representative has been granted.

3.2 CONTRACTOR

3.2.1 CONTRACTOR REPRESENTATIONS

The Contractor makes the following representations to the RTA:

- A. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as currently represented by the Contract;
- B. The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform the Contractor's obligations required by the Contract;

- C. Contractor is able to furnish plant, tools, material, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract and has sufficient experience and competence to do so; and
- D. Contractor shall perform with its own forces work equivalent to at least twenty-five percent (25%) of the Contract Price.

3.2.2 GENERAL DUTIES

- A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is hereby given notice that the RTA will be relying on the accuracy, competence and completeness of the Contractor's work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.
- B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work in accordance with all Contract requirements. RTA is solely responsible for the payment of all sales, use, excise, export, and other taxes arising from the sale, use, or delivery of the Vessels.
- C. The Contractor shall also provide sufficient staffing and supervision to process Requests for Information, Change Proposals, Submittals, and Change Orders, close out documentation, and to perform all other requirements of the Contract and all Work.
- D. The Contractor shall take into consideration and make due allowances for reasonably foreseeable delays and interruptions to the work such as weather, equipment breakdowns, shipping, regulatory agency inspections and approvals. Receipt and acceptance of a schedule submitted by the Contractor shall not be construed to assign responsibility for performance or contingencies to the RTA or relieve the Contractor of its responsibility to take reasonable steps to adjust its forces, equipment, and work schedules as may be necessary to insure completion of the work within the prescribed time (See e.g. § 8.3B).

3.2.3 DUTY TO INSPECT CONTRACT DOCUMENTS

- A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein. Contractor will not be required to provide professional services which constitute the practice of architecture and engineering except to the extent provided for in the technical specifications and drawings.
- B. The Contractor should not proceed with the work in question until the Contractor receives written direction from the RTA's Representative.

- C. If the Contractor proceeds with the work in question without written direction from the RTA's Representative, the Contractor shall be responsible for any costs or damages, including but not limited to:
 - 1. Fines or penalties;
 - 2. Demolition, tear out, removal, cleanup, remediation, or fixing the work in question; and
 - 3. Delay, disruption, and loss of productivity.
- D. .

3.2.4 COMMUNICATIONS

- A. The Contractor must designate, in writing, its Contractor's Representative who is responsible for administering the Contract and has the authority to bind and obligate the Contractor in the performance of the Work. The Contractor's Representative shall be identified in the Contract.
- B. Communication with the Contractor shall be through the Contractor's Representative.
- C. The Contractor shall notify the RTA immediately if the Contractor's Representative is changed and identify the name of the new Contractor's Representative and effective date of the change.

3.2.5 CONTRACTOR'S SUPERVISION AND EMPLOYEES

- A. Contractor has an obligation to provide qualified and competent people to administer the contract and perform all the Work.
- B. During performance of the Work the Contractor shall have supervisory personnel on-site and available to administer, manage and coordinate the Work. The RTA shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.
- C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on-site and shall only employ workers skilled in the work assigned. If requested by the Project Representative, Contractor shall provide the RTA's Representative with copies of licenses, registrations, and certifications that are relevant to the Project.

3.2.6 COOPERATION BY CONTRACTOR

The Contractor shall maintain a minimum of two full size sets of approved plans and Contract Documents, one set of which the Contractor shall keep available on the work site at all times. "As Built" plans are required to accept a body of work and shall be maintained by the Contractor on site.

The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the RTA, its inspectors and other Contractors in every way possible.

The Contractor shall have on the work site at all times, as its agent, a competent Contractor's Representative, thoroughly experienced in the type of work being performed and capable of reading and thoroughly understanding the plans and specifications, who shall communicate with the RTA or its authorized representatives to the extent provided elsewhere in the Contract Documents. The Contractor's Representative shall have full authority to supply such materials, equipment, tools, labor and incidentals as may be required. Such Contractor's Representative shall be furnished irrespective of the amount of work sublet.

The Contractor shall bear the sole risk to rebuild, repair, restore, replace and to otherwise make good all damage, loss or injury to all or any portion of the Vessels, and to any work or material for the Contract, including Change Order work, on or incorporated into the Vessels as long as Contractor was responsible for any damage, loss or injury until such time as the entire Work for the Vessels has been finally accepted by the RTA. Nothing in this section shall prevent either party from making a claim under applicable insurance policies for coverage of such damage, loss, or injury.

3.3 CORRESPONDENCE BETWEEN THE PARTIES

All correspondence from the RTA shall be addressed to the Contractor's Representative. All correspondence from the Contractor shall be addressed to the RTA's Representative.

3.4 PROGRESS MEETINGS AND MANAGEMENT REVIEWS

3.4.1 PROGRESS MEETINGS.

- A. The Contractor shall schedule and conduct with the RTA progress meetings at a minimum on a weekly basis starting on the date of Notice to Proceed. At the option of the RTA, the progress meeting may be arranged as a telephone conference.
- B. The Contractor shall prepare an agenda for each progress meeting, complete with current progress summaries. A copy of the agenda shall be provided to the RTA not less than 24 hours prior to each scheduled meeting date.
- C. During these progress meetings, the Contractor shall be prepared to discuss the status of the work to date, current and potential problem areas that could affect the Project Schedule and cost, and activities including inspections scheduled for the following two weeks.
- D. The Contractor shall provide a written record of the minutes of the progress meetings, provide copies to the RTA and maintain a file of minutes. The RTA shall sign the minutes acknowledging receipt of the minutes and may, at its discretion, provide comments or additional information to the Contractor to be appended to the minutes to resolve questions of accuracy. The acknowledgement of the accuracy of the minutes by RTA shall not constitute acceptance of any item of equipment or component parts.

3.5 SCHEDULE OF DELIVERABLES

Within 14 days after approval and complete design of the Vessel the Contractor shall submit a schedule of dates for deliverables for the work on a spreadsheet. The schedule shall list all drawings, analyses, reports, Technical Specifications, purchase technical specifications, technical publications, and other deliverables that must be developed pursuant to the RTA's Requirements and other Contract Documents. The schedule shall include, but not be limited to, the various deliverables cited in the Technical Specifications and other Contract documents.

The schedule shall provide for various interim submittals, revisions, and a final submittal of each deliverable, and shall include columns giving the intended dates of all submittals. The quantity and timing of submittals for each deliverable shall be proposed by the Contractor in the schedule, and should appropriately consider the need for RTA endorsement of intended arrangements and other salient characteristics of the design.

The schedule shall include columns for the following entries for each listed deliverable: deliverable title, scheduled dates of submittals, actual dates of submittals, latest revision (by letter), drawing size, outstanding reservations, and expected release date. The schedule shall also identify deliverables that are required to be submitted to each Regulatory Body for approval, review and/or information, and the expected and actual dates of such approvals.

The schedule of deliverables shall, to the extent practicable, evenly distribute the submission of deliverables.

Contractor shall provide electronic copies of all Drawings and data as PDF Electronic Data files as well as electronic files in native format, i.e., Microsoft Word, Excel, Project, AutoCAD to RTA for at least a fourteen (14) calendar day review and comment period.

The schedule shall allow at least fourteen (14) calendar days for RTA review of each submitted deliverable, unless a longer review time for a particular submittal or deliverable is specified in the RTA's Requirements, in which case the longer review time shall be used.

The schedule shall be revised to show all changes, progress and delays, and shall be submitted monthly in time to be received by the RTA not later than the 10th of each month, beginning with the month following the initial submittal. Each schedule revision shall be clearly identified in color.

PROPOSED PAYMENT SCHEDULE	
Payment 1 (10%):	Due upon approval of General Arrangement drawings and issuance of Detailed Design NTP
Payment 2 (20%):	Laying of the Keel
Payment 3 (20%):	Framed and plated hull
Payment 4 (20%):	Engines Set
Payment 5 (20%):	Launch of Sea Trail
Payment 6 (10%):	Delivery and Acceptance of Vessels

3.6 PAYMENT SCHEDULE

3.7 NOTICE TO PROCEED WITH DESIGN AND CONSTRUCTION

The date of signature by the RTA of the Notice to Proceed (NTP) shall be the date on which the Contractor is allowed and expected to begin with design and construction and from which date Contract Time shall accrue (See § 8.3A). The NTP may be issued by the RTA after all RTA reviews of all required documents are satisfactorily completed and submitted. NTP shall be issued when all contingencies for, and conditions precedent to, Contract Award have been met.

Within fourteen (14) days after contract execution and prior to Notice to Proceed the Contractor shall submit the following to the RTA (also see § 3.5):

A. Project Schedule (in accordance with § 4).

The schedule must consider and include time for RTA's approvals.

The schedule must show the order in which the Contractor proposes to carry out the work and the contemplated dates on which it and its subcontractors shall start and finish each of the salient features of the work including any scheduled periods of shutdown. The schedule shall also indicate any anticipated periods of multiple-shift work.

The schedule must represent all work beginning at date of receipt of Notice to Proceed. The schedule shall also include proposed begin and end construction dates for each major structure unit or task and all subcontract/vendor/supplier activities.

B. A complete Material/Equipment List.

C. A list showing anticipated dates for procurement of materials and equipment, or the ordering of articles of special manufacture; a list showing proposed begin and end fabrication and installation dates for piping systems, heating, ventilation and air conditioning systems, electrical installations, foundations, equipment installations, tests and trials, maintenance items, and other items of scheduled work; and proposed shipment dates for material other than stocked items.

- D. Submittals schedule and procedures.
- E. A list showing all proposed subcontractors, vendors, and suppliers to be used, their addresses and applicable purchase order number.
- F. A letter designating the Contractor's Representative, defining that person's responsibility and authority, and providing a specimen of his or her signature.

3.8 SUBMITTALS

- A. Submittals include shop drawings, setting and erection drawings, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor or a Subcontractor as set forth in the Technical Specifications ("Submittals"). The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by the RTA with one of the following annotations: (1) no exceptions taken or (2) note markings.
- B. Prior to furnishing the Submittals to the RTA, the Contractor shall: (1) review all Contractor and Subcontractor Submittals for accuracy, completeness, and compliance with the Contract; (2) coordinate all Submittals with all Contract Work by other trades and with field measurements; and (3) indicate approval on the Submittals as a representation that it has complied with its obligation to review and coordinate Submittals. Where required by law or by the Contract, Submittals shall be stamped by an appropriate licensed professional. Submittals lacking required stamps or evidence of Contractor review and approval will be returned without review by the RTA for resubmission. Submittals shall be sequentially numbered.
- C. When submitting information, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor shall not perform work that materially alters, varies, adds, deviates, or omits Work without prior specific written acceptance by the RTA.
- D. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract. The Contractor shall prepare and keep current, for review by the RTA, a schedule of Submittals which is coordinated with the Contractor's Project Schedule and allows the RTA reasonable time for review.
- E. The RTA shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the RTA to respond to a Submittal until fifteen (15) days after the Submittal is received by the RTA, and then only if failure by the RTA to respond affects the Contract completion date.
- F. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted and note revisions in numerical order. The cost of the review of revised submittals shall be borne by the RTA. The cost of review shall

include, without limitation, administrative, design, and engineering activities directly related to review of Submittals.

- G. The RTA shall review the Contractor's Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals are not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by the RTA to take exception to a Submittal shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. The RTA's review of a Submittal shall not alter or waive the requirements of the Contract unless the RTA has issued prior written approval of such change or alteration of the Contract requirements.
- H. The Contractor's failure to identify any error, deviation, or omission and subsequent acceptance of the Submittal by the RTA shall not relieve the Contractor from complying with the Contract requirements.

3.9 REQUESTS FOR INFORMATION

- A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by the RTA because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected Work until the RTA has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.
- B. RFIs shall only be submitted by the Contractor on a RFI Form provided by the RTA or in a form acceptable to the RTA. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed by the RTA. In the RFI the Contractor shall set forth its own interpretation or understanding of the requirement along with reasons why it reached such an understanding.
- C. The RTA will review RFIs to determine whether they meet the requirements identified above in paragraph B to qualify as an RFI. If the RTA determines that the document is not an RFI it will be returned to the Contractor. When appropriate the Contractor may resubmit the RFI on the proper form, with all required information and in the proper manner.
- D. The RTA shall respond in writing with reasonable promptness to Contractor's RFI.
- E. At the request of the Project Representative, the Contractor shall prioritize its RFIs; identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.

3.10 SEQUENCE OF EVENTS LEADING TO FINAL ACCEPTANCE OF THE VESSELS

Sequence of Events	Location of Events	Responsible Party
Shop Inspections & Tests	Contractor's or OEM Facility	Contractor
Construction Inspections & Tests	Contractor's Facility	Contractor
Operation & Performance Tests	Contractor's Facility	Contractor
Dock Trials	Contractor's Facility	Contractor
Contractor's Trials	At Sea	Contractor
Acceptance Trials	At Sea	Contractor
Operational Acceptance Survey	At Sea and Pier Side, Contractor's facility	RTA
Delivery Voyage	At Sea	Contractor
Delivery Acceptance	RTA's facility	RTA
Final Acceptance	New Orleans, Louisiana	RTA

3.11 PHOTOGRAPHS SHOWING MONTHLY PROGRESS AND MAJOR EVENTS

The Contractor shall submit a set of monthly digital progress photographs illustrating the progress of construction work. Photographs shall be taken in such numbers and at such angles so as to adequately depict the progress to date.

Photographs shall also be provided of major events such as keel laying, module assembly, launch, and dock and Acceptance Trials.

Each photograph shall be dated using a digital camera which electronically and automatically dates the photograph. All photographs shall also be submitted as computer-ready formatted digital pictures.

The Contractor shall allow the RTA and its authorized representatives to take photographs of the Vessels or its components during construction.

3.12 MANAGEMENT REVIEWS

The Contractor shall present Management Reviews to the RTA. The reviews shall be scheduled at least once per month and shall be coordinated so that they are held concurrently with the Progress meetings. The first review is to be held within 30 calendar days of Notice to Proceed. These reviews shall, at a minimum, address the following topics:

- A. Status of the design and outstanding design issues. Actions taken to resolve issues and schedules for same shall be included. RTA-responsible actions shall also be

included that affect the Contractor.

- B. Material status, certification, delivery schedule and other outstanding issues. Actions taken to resolve issues and schedules for same shall be included. RTA-responsible actions that affect the Contractor shall also be included.
- C. Construction schedule, issues and status. Actions taken to resolve any issues shall be addressed. RTA-responsible actions that affect the Contractor shall be included.
- D. Regulatory Body approval and certification; status and outstanding issues; actions underway to resolve any outstanding issue(s).
- E. Quality Assurance.
- F. Milestone Payment status.
- G. Change Order status and any contractual issues.

The Contractor shall address any RTA actions that are requested or required to resolve any issue and/or support the Contractor's efforts.

The Contractor shall prepare an agenda and submit the agenda to the RTA for review, input and comment one week prior to the meeting.

3.13 REGULATORY BODY REVIEW, APPROVAL AND CERTIFICATION OF WORK

The Contractor shall plan, coordinate and obtain in a timely manner all Regulatory Body inspections of the work, and reviews and approvals of the related drawings, specifications and other documentation, as required to obtain the required Regulatory Classifications and certifications of the Vessels to maintain the project schedule. A schedule of inspections, tests and trials requiring Regulatory Body observance shall be maintained in accordance with the provisions of the RTA's Requirements.

All deliverables shall be revised to address comments provided by the Regulatory Bodies in conjunction with their reviews. This work shall be accomplished to the satisfaction of the RTA.

All fees associated with inspections, witness of material and equipment tests and certifications, reviews and approval of work, and classification and certification of the Vessels by Regulatory Bodies shall be included within the Contract Price. Costs of travel and per diem for visits to Contractor's and manufacturers' facilities by Regulatory Body agents shall be considered included in these fees.

A copy of all written communications between the Contractor or its agents and the Regulatory Bodies, and any attached drawings or other technical documentation included with each written communication, which relate to the Project shall be provided to the RTA. A copy of each item of written communication, plus any attached technical documentation, from the Contractor or its agents to a Regulatory Body shall be forwarded to the RTA on the day the communication is mailed or otherwise transmitted to the Regulatory Body. A copy of each item of written communication, plus any attached

technical documentation, from a Regulatory Body to the Contractor or its agents shall be provided to the RTA within two days of receipt by the Contractor or its agents.

3.14 REVIEW OF WORK

The Specifications negotiated by the RTA and Contractor and prepared by the Contractor shall clearly indicate which deliverables, drawings, plans and documents shall be submitted to the RTA "For Approval" or "For Information Only."

Approval of submitted work by the RTA shall be solely for the purpose of conveying the RTA's determination that the RTA does not object to continuing with the project based on the submitted work. In no event and under no circumstances shall approval of the RTA of any aspect of the Contractor's work be a warranty that the work is complete, accurate or of sound design, or that the completed Vessels, subject to inclusion of the approved work, shall necessarily conform to the minimum functional, performance or technical requirements of the Contract, or that the work complies with Regulatory Body requirements. Such characteristics of the work are the Contractor's responsibility, and any subsequent discovery of omissions or deficiencies with regard to the completeness, accuracy or soundness of the work, and/or conformance with the Contract, and/or compliance with Regulatory Body requirements, shall be remedied by the Contractor to the RTA's satisfaction through correction of the omissions or deficiencies at the Contractor's expense, irrespective of prior approval of the work by the RTA.

"Approved" status cannot be conferred by anyone but the RTA's Representative in writing. RTA approval does not relieve the Contractor of securing Regulatory Body approvals as required herein.

Any submittal that is found to be substantially deficient upon review shall be rejected and returned to the Contractor for resolution of deficiencies and resubmitted.

3.15 CONFORMITY WITH CONTRACT

All Work performed and all materials furnished shall be in conformity with the Contract Documents, as amended by any change orders or other written agreements of the parties. The failure of the RTA in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any terms or option on any future occasion.

In the event the RTA or Regulatory Body inspectors find the materials or the finished product in which the materials are used or the work performed are not in conformity with the Contract Documents, or with related Regulatory Body requirements, and have resulted in an unacceptable or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

Conformity, as used in this section, means compliance with the Contract requirements, Regulatory Body requirements, standard maritime practices, good shipbuilding practices, and reasonable and customary manufacturing and construction tolerances within good shipbuilding practices where working tolerances are not specified. Conformity means compliance with working tolerances where working tolerances are specified. Without detracting from the complete and absolute discretion of the RTA to insist upon such

tolerances as establishing conformity, the RTA may accept variations beyond such tolerances as conformity where they shall not materially affect the value or utility of the Work and the interests of the RTA.

The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers such errors or omissions, it shall immediately notify the RTA. The RTA shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract. Any action taken by the Contractor without this determination shall be at its risk and expense.

In certain respects, the requirements of the approved design for the Vessels may exceed the requirements of pertinent Regulatory Bodies. Such approved design requirements shall not be changed except on written approval of the RTA.

3.16 COORDINATION AND ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

The Contractor's Proposal, Contract Drawings and Technical Specifications, and all supplementary documents comprising the Contract as delineated in § 3.16, are essential parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for complete work.

In case of discrepancy, the order of precedence of Contract Documents shall be as

- A. Contract/Change Orders
- B. General Conditions (Prepared by RTA)
- C. RTA's Requirements (as indicated in RFP 2016-007)
- D. Technical Specifications (Prepared by Contractor)
- E. Contract Drawings (Prepared by Contractor)
- F. Proposal Design Package other than Specifications and Drawings (Prepared by Contractor)

Nothing in the Contractor's Proposal, Specifications, Contract Drawings or any other Contract Document prepared by the Contractor shall cancel or modify any requirement of the RTA delineated in the General Conditions or any other Contract document prepared by the RTA, unless agreed in writing by both parties.

3.17 QUALITY ASSURANCE AND QUALITY CONTROL OF WORK

Nothing contained in this subsection shall in any way restrict the RTA's rights under any warranty or guarantee.

The Contractor shall utilize reasonable and customary Quality Assurance (QA) and Quality Control (QC) programs that assure that all aspects of design, construction, and completion of the Work comply with the requirements of the Contract. The programs

shall ensure that the latest applicable drawings, requirements, specifications and instructions defined in the Contract, as well as authorized changes, are communicated to workers and used in the work. The programs shall also include sequential and well-documented inspections and tests of completed elements of work by the Contractor. The intent of these inspections and tests shall be to identify and resolve all deficiencies prior to presentation of the Work to the RTA for acceptance. The QA program and its implementation plan (described below) shall be coordinated with the inspection and test requirements of the Contract; as well as the weight control program, noise and vibration control program, and other programs required by the Contract or otherwise developed by the Contractor to control the work.

At a minimum, the Quality Assurance program shall make provision for the following or similar:

- A. A status report shall be provided monthly, at the Management Review, by the Contractor, listing any and all discrepancies in a Discrepancy Report (hereinafter "DR") and their disposition(s). Outstanding issues shall be highlighted.
- B. A process utilizing a Contractor-developed standard DR form, through which the RTA can communicate potential issues and problems to the Contractor. The form shall include, at a minimum:
 - 1. Independent tracking number;
 - 2. Date issue initiated or identified;
 - 3. Reference drawings/materials and revisions;
 - 4. Subject;
 - 5. Requirement references;
 - 6. Issue or problem description;
 - 7. Signature column for RTA and date, if corrected;
 - 8. Response area for Contractor, sign off and date.

The RTA may generate a DR and the Contractor shall be responsible for tracking and providing a disposition for all issues raised.

The Contractor shall maintain and comply with its internal QA program and provide same as an attachment to these General Conditions.

3.18 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

All Work that does not conform to the Contract as amended by any and all Change Orders or other written agreements of the parties shall be considered as unacceptable work.

Unacceptable Work, whether the result of poor workmanship, use of defective, unsuitable, or unauthorized materials or equipment, or damage through carelessness or

any other cause, found to exist prior to the final acceptance of the Work, shall be remedied or removed immediately and replaced in an acceptable manner at the Contractor's expense. Unacceptable Work shall not be defined to include any damage to the Vessels that is caused in whole or in part by the RTA or its officers, agents, employees, or representatives.

Upon failure on the part of the Contractor to comply forthwith with any order of the RTA made under the provisions of this section, the RTA shall have authority to cause unacceptable Work to be remedied, or removed and replaced, and to deduct the cost from any monies due or to become due the Contractor.

3.19 FINAL CLEAN-UP

Before the Operational Acceptance Survey (see § 3.20), all rubbish, excess materials, temporary structures, and Contractor's equipment shall be removed from the Vessels and, as applicable to the item, disposed of. All interior and exterior surfaces of the Vessels shall be washed, dusted, polished, vacuumed, and/or disinfected, as applicable to the surface, so as to be thoroughly clean, new, undamaged, and fit for customer service.

The Contractor shall perform fumigation or other effective treatment, as necessary, for elimination of fungi, insects, and vermin.

Immediately prior to the Delivery Acceptance Survey (see § 3.21) of the Vessels one (1) and Vessels two (2), all surfaces that require re-cleaning as a result of use during the delivery voyage or other cause shall be washed, dusted, polished, vacuumed, and/or disinfected, as applicable to the surface, so as to be thoroughly clean, new, undamaged, and fit for customer services, throughout the Vessels.

3.20 RTA'S ACCEPTANCE TRIALS AND OPERATIONAL ACCEPTANCE SURVEY

The Contractor shall provide the RTA with five (5) days' notice that the Vessels are ready for the Acceptance Trials and Acceptance Survey. The Acceptance Trials and Acceptance Survey shall occur at or near the Contractor's Construction Facility and be contingent upon the following:

- A. Accepting an allowance for a small quantity of minor deficiencies (see below), all physical work shall be completed, with all requisite Regulatory approvals, certifications and letters of compliance obtained, and with the Vessels ready for service in full compliance with the Contract to the satisfaction of the RTA.
- B. The Vessels shall be thoroughly cleaned in accordance with § 3.19 of these provisions to the satisfaction of the RTA.
- C. All shop and installation tests and inspections shall be completed, with results demonstrating compliance with the Contract to the satisfaction of the RTA.
- D. Builders Trials and prerequisite tests shall have been completed, with results demonstrating compliance with the Contract, and approved by the RTA.
- E. Acceptance Trials and prerequisite tests shall have been completed, with results

demonstrating compliance with the Contract, and approved by the RTA.

- F. Correction of all known deficiencies including deficiencies that develop or are identified after Acceptance Trials.
- G. The Operational Acceptance Survey described herein shall have been completed, with the results supporting a conclusion by the RTA that the Vessels is complete, clean, free of deficiencies, and ready for delivery to the Contractor's facility in compliance with the Contract to the satisfaction of the RTA.
- H. Completion of factory and shipboard Contractor-responsible training.

USCG and other Regulatory Body approval and issuance of a COI, excluding any items mutually agreed by both parties to be the responsibility of the RTA, such as emergency drills, compliance with a drug and alcohol program and required crew training, which clearly fall outside the responsibility of the Builder.

The survey, tests, inspections and trials referred to in subparagraphs "C" through "I" above shall serve to assist the RTA in making the determination as to whether the requirements of subparagraphs "A" and "B" above are fulfilled.

The conduct of the Operational Acceptance Survey shall be contingent upon receipt by the RTA of written notice from the Contractor of presumptive completion of all physical work, testing and clean-up provided for under the Contract. The Operational Acceptance Survey shall be performed in conjunction with the Acceptance Trials for the Vessels.

The Operational Acceptance Survey shall be solely for the purpose of relating the RTA's determination that, if the Contractor delivers the Vessels in like condition in material, operation and performance, and corrects deficiencies which are authorized in writing by the RTA to be corrected following Operational Acceptance but before the Vessels' delivery (see below), the Vessels as constructed and presented is acceptable to the RTA.

Operational Acceptance by the RTA shall not constitute acceptance of any latent defects or other deficiencies which may develop or be identified subsequent to Operational Acceptance, but prior to completion of the warranty period. Such defects and deficiencies are the responsibility of the Contractor to correct. In addition, Operational Acceptance shall not stop the count of construction time, nor shall such acceptance be the basis for starting the count of time for the Warranty Period.

An Operational Acceptance Survey for the Vessels shall be a prerequisite to departing on the voyage from the vicinity of the Contractor's construction facilities to the delivery location.

An Operational Acceptance Survey shall be conducted after all physical work; testing and cleanup provided for under the Contract are completed. The intent of the Operational Acceptance Survey shall be to affirm that the construction of the Vessels is complete; the form, fit and function of installed materials are satisfactory, and the Vessels is clean and clear of rubbish, excess material, etc., in accordance with § 3.19. In conjunction with the survey, the status of the compartment close-outs required by the

Contract shall be presented for review, with any remaining close-outs performed prior to completion of the Operational Acceptance Survey.

During the Operational Acceptance Survey, the Contractor shall function as the representing authority (presenting the Vessels for acceptance) and the RTA shall function as the survey representatives. Operational Acceptance Survey check-off sheets and related documentation shall be developed by the Contractor and submitted to the RTA for approval at least 45 calendar days prior to the scheduled date of the survey. Operational Acceptance Survey documentation shall be developed under (for example: main propulsion, navigation equipment) to facilitate representation during surveys by persons knowledgeable and experienced with the surveyed category of work and familiar with the requirements applicable to the category and subcategory. Detail provided in survey documentation must be satisfactory to the RTA. The existence of any uncorrected deficiency affecting the safety, operation, performance or immediate efficient use of the Vessels for its intended service shall be sufficient cause to reject Operational Acceptance of the Vessels pending correction of the deficiency by the Contractor. The existence of a significant number of uncorrected deficiencies shall likewise be a cause for rejection of the Vessels until their number has been reduced to a level acceptable to the RTA.

Upon completion of the Operational Acceptance Survey for the Vessels, a letter relating the RTA's determination regarding Operational Acceptance of the Vessels shall be issued by the RTA. The letter shall provide notice as to the extent of unsatisfactory or incomplete work which must be corrected or completed prior to Delivery of the Vessels, and which discrepancies, if any, may be deferred for accomplishment after Delivery. In connection with this notice, it must be recognized that under the terms of the Contract, the Contractor is required to deliver the complete Vessels that is free of all deficiencies, and that deferral of corrective work is not a waiver by the RTA of its entitlement to complete the Vessels free of deficiencies.

The Contractor shall immediately take appropriate action to correct and complete any work that is determined to be unsatisfactory or incomplete, and shall be responsible for any delay in the project associated with correcting deficiencies. The cost of such delay shall be at the Contractor's expense.

Any work or operation of the Vessels called for by the RTA in the course of inspection of previously unsatisfactory or incomplete Work shall be performed at the Contractor's expense.

The Contractor shall retain full responsibility, including risk of loss for the Vessels until RTA accepts and takes possession of the Vessels at point of delivery. Such responsibility shall include the insurance, security, safety, maintenance and operation of the Vessels and any other obligations under the contract. The Contractor must procure and maintain and provide proof of insurance against any loss of or damage to the Vessels or personal injury (including death) or damage to or loss of property caused during each of the delivery voyages as set forth in § 3.20 and § 3.21. It is intended that the RTA shall take custody of the Vessels upon acceptance of delivery of the Vessels in accordance with § 3.21.

3.21 DELIVERY VOYAGE, DELIVERY ACCEPTANCE SURVEY AND DELIVERY ACCEPTANCE

Following the Acceptance Trials and Operational Acceptance Survey, the completed Vessels shall be moved under the Contractor's responsibility from the construction site to a designated mooring location designated by the RTA.

Delivery Acceptance for the Vessels by the RTA shall occur at the RTA's facility and be contingent upon the following:

- A. Correction of all known deficiencies including deficiencies that remained at the time of Operational Acceptance but were authorized by the RTA to be corrected after Operational Acceptance per § 3.20, as well as all other deficiencies that develop or are identified after Operational Acceptance.
- B. Completion of Acceptance Trials (if required to confirm completion of any deficiencies)
- C. Correction of all known deficiencies including deficiencies that develop or are identified after Acceptance Trials
- D. Completion of re-cleaning and other work necessary to ensure that the condition of the Vessels in material, operation and performance is identical to the condition on which Delivery Acceptance is based.
- E. Completion of all crew Contractor-responsible training.
- F. Completion of valuable fluid soundings. Vessels shall be provided to RTA with all vital fluid levels (i.e. lubricating oils, hydraulics, cooling agents) at manufacturers' recommended levels. Fuel shall be at 90% capacity.
- G. Completion of a Delivery Acceptance Survey for the Vessels, with results supporting the conclusion that the Vessels is complete, clean, free of deficiencies and ready for service in compliance with the Contract to the satisfaction of the RTA. Additionally, all of the charts and publications (including electronic charts) that are furnished by the Contractor shall be updated to and including the date of Delivery Acceptance.
- H. Provision by the Contractor of all warranties, guarantees, releases, affidavits, and other documentation required by these Conditions or elsewhere in the Contract documents.

The Contractor shall have the Vessels ready for Delivery Acceptance by the approved Delivery Acceptance date for the Vessels, with all crew training, survey of spaces and other work associated with Delivery Acceptance as described herein completed by that date.

The conduct of the Delivery Acceptance Survey shall be contingent upon receipt by the RTA of written notice from the Contractor of presumptive readiness of the Vessels for delivery, including correction of deficiencies.

The Delivery Acceptance Survey shall be made jointly by the RTA and Contractor at the point of delivery. The Contractor shall provide appropriate Delivery Acceptance Survey check-off lists and related documentation for use by survey personnel. The documentation shall be submitted for RTA approval no less than twenty-one (21) calendar days prior to the scheduled date of Delivery Acceptance for the Vessels. Detail provided in such survey documentation must be satisfactory to the RTA.

The RTA, by determining that Delivery Acceptance has been achieved, does not waive any warranty, express or implied pursuant to this Contract.

Upon completion of the Acceptance Trials, training, fluid soundings and the Delivery Acceptance Survey, a letter relating the RTA's determination regarding Delivery Acceptance of the Vessels shall be issued by the RTA. The letter shall provide notice as to the extent of unsatisfactory or incomplete work which must be corrected or completed prior to Delivery Acceptance of the Vessels. The existence of any uncorrected deficiency shall be sufficient cause to reject Delivery Acceptance of the Vessels pending correction of the deficiency by the Contractor.

The date of Delivery Acceptance shall constitute the date on which the RTA takes custody of the Vessels from the Contractor. Refusal by the RTA at any stage to accept the Vessels shall revert title in the Contractor in the event that title has otherwise passed to the RTA, and justified revocation of the RTA's acceptance of Vessels after Delivery Acceptance shall revert title to the Vessels in the Contractor. The Contractor must maintain and provide proof of insurance against any loss of or damage to the Vessels or personal injury (including death) or damage to or loss of property caused by or in connection with the Vessels during any period when title reverts to the Contractor, including, without limitation Full Form Hull and Machinery Insurance (American Institute Hull Clauses or equivalent) in an amount equal to the value of the Vessels, and Full Form Protection and Indemnity Insurance (SP-38 or equivalent). Such insurance and proof of insurance must be satisfactory to the RTA, and shall be at the Contractor's expense including all deductibles. The RTA must be named as additional named insured under any such Insurance.

Liquidated Damages associated with failure to meet Delivery Acceptance of the Vessels by the Contract specified date shall be assessed by the RTA as discussed in § 8.11.

The Vessels shall be delivered free of mold, vermin and insects upon the date of Delivery Acceptance.

3.22 FINAL ACCEPTANCE

Ninety calendar days after Delivery Acceptance of the second Vessels and following all provisions stated therein, final payment to the Contractor, and completion of all Contract closeout requirements as set forth in Section 9.6 (e.g., contractor release, settlement of all claims, proof of payment of all payroll and revenue taxes, and submittal of all Operations and Maintenance manuals) the RTA shall issue the letter of Final Acceptance releasing the Contractor from further performance under the Contract subject to all warranty and contract security obligations and rights and remedies reserved in § 3.20 and § 3.21. Final Acceptance of the work shall be withheld until the Contractor furnishes all certificates, warranties, guarantees, releases, affidavits, and other documentation required by the Contract.

Final payment against the Contract shall be made in accordance with the provisions of § 9.6.

3.23 CONTRACT COMPLETION

Provided that all requirements of the Contract have been met, including resolution of all warranty issues to the satisfaction of the RTA, the Performance and Payment Bond will be released following completion of the Warranty Period required by § 3.26.

3.24 TITLE AND SECURITY INTERESTS

3.24.1 TITLE TO VESSELS & EQUIPMENT.

The Contractor warrants and guarantees that title to all work, materials and equipment will pass to the RTA upon payment of each such Interim Progress or Final Payment, free and clear of all liens, claims, security interests or encumbrances; and that no work, materials or equipment covered by a request for payment will have been acquired by the Contractor or by any other person performing the Work on the Vessels or furnishing materials and equipment for the Vessels subject to an agreement under which an interest therein or an encumbrance thereon is retained by the Contractor or otherwise imposed by the Contractor or such other person. Upon request of RTA, Contractor shall at a reasonable time and place provide documentation of invoices, accounts and proof of payment to establish that suppliers of machinery, equipment and supplies identified to the work to be completed pursuant to this Contract are timely being paid and that no liens are being incurred other than as are being timely satisfied in the ordinary course of business. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials, (2) waive any rights of the RTA to insist on full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work or materials.

3.24.2 NO LIENS; SECURITY AGREEMENTS & SUBORDINATION.

The parties agree that no lien or other *in rem* proceedings may attach to or otherwise affect RTAs title to the Vessels or any other Vessels or property owned by RTA in connection with any claim or dispute arising under or in connection with this Contract. Any person or entity which holds a security interest on property of Contractor which reasonably may be construed as applying to the Vessels (including materials and equipment identified to its construction), during its construction, the secured party shall agree to subordinate its security interest to the interests of RTA to the extent that RTA has made progress payments covering such work, materials and equipment. Contractor agrees to obtain subordination agreements for any other holders of security interests in property to which Contractor has title or possession which might apply to the Vessels, its materials, machinery and equipment as such become identified to the construction of the Vessels. Contractor agrees to obtain subordination agreements in form satisfactory to RTA and to provide originals of such agreements to RTA within 15 days after notice to Contractor by RTA of the identity of each such secured party.

3.25 CONTRACTOR AND SUBCONTRACTOR BOOKS AND RECORDS; AUDIT

The Contractor, and all Subcontractors and suppliers, shall maintain accurate books, records, accounts and reports required under this Contract, including management and

financial records during the course of the project from receipt of the RFP through execution of the Final Acceptance. The Contractor, and all subcontractors, will, with reasonable notice, allow the RTA, or any of its authorized representatives, to review and copy any such financial or other records kept by the Contractor and all subcontractors including those relating to the cost or pricing data submitted under § 9.4 and § 6, relevant records for claims submitted under § 10.4 and certified payroll. One copy of every document selected by the RTA for review will be at the Contractor's and/or subcontractor's expense.

The RTA, or any of its authorized representatives may, with reasonable notice, audit the books, records, accounts and reports of the Contractor or any subcontractor or supplier reasonably related to this Contract. This right to audit shall exist at all times, including, but not limited to, any period while resolution of a dispute between the RTA and Contractor is pending, and as long as any Contractor or subcontractor is required to maintain books, records, accounts and reports. Such books, records, accounts and reports include, but are not limited to, records of the method used and accounting performed regarding the allocation of indirect and direct costs relating to the cost or pricing data submitted under § 9.4 and § 6, relevant records for claims submitted under § 10.4, and certified payroll.

3.25.1 RECORD DOCUMENTS

- A. The Contractor shall keep a copy of the Contract Documents at its premises.
- B. The Contractor shall keep at the premises an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents. The Record Documents shall be maintained in hard copy and at the RTA's option, in electronic format meeting the RTA's requirements. The technical specifications shall state the electronic format.
- C. The Record Documents shall be kept up-to-date and be available for review by the RTA at all times, including but not limited to at each job progress meeting. Failure to have the record set up-to-date, after notice and reasonable opportunity to cure, shall be sufficient reason for the RTA to withhold payment in accordance with § 9.4.3, Payments Withheld, until all such information is recorded.
- D. Record Documents may be used to assist the County to verify the appropriate progress payment.

3.25.2 COST RECORDS

- A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall segregate and separately record at the time incurred all costs (1) directly associated with each work activity and (2) directly or indirectly resulting from any event or condition for which the Contractor seeks an adjustment in the Contract Price, Contract Time, and/or damages.
 - 1. Any costs claimed to result from any such event or condition, including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended overhead shall be recorded promptly after it is incurred and be fairly and reasonably allocated to each such event or

condition and to other causes of such costs.

2. The RTA shall be provided with a detailed description of all such costs and the basis of allocation. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summary of costs available for review, inspection, and copying by the RTA upon request.
3. Any work performed for which the Contractor intends to seek an adjustment in Contract Price and/or Contract Time shall be recorded promptly after it is performed and kept separate so as to distinguish it from Contract Work.

3.25.3 MAINTENANCE AND INSPECTIONS OF DOCUMENTS

- A. All Contractor's, Subcontractors', and Suppliers' documents and records relating to the Contract shall be open to inspection, audit, and/or copying by the RTA or its designee:
 1. During the Contract Time; and
 2. For a period of not less than five-year after the date of Final Acceptance of the Contract ("Preservation Period"); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- B. The Contractor shall take all reasonable steps to ensure that Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.
- C. Inspection, audit, and/or copying of all documents described herein, may be performed by the RTA or its designee at any time with not less than seven (7) days' Notice. Provided however, if an audit or inspection is to be commenced more than sixty (60) days after the Final Acceptance date of the Contract, the Contractor will be given twenty (20) days' Notice of the time when the audit or inspection is to begin.
- D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to the RTA, for inspection, auditing, and/or copying during normal business hours.
- E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify the RTA and preserve such records, at its expense, as directed by the RTA.
- F. The Contractor, Subcontractor, and Supplier, shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records to allow the RTA to verify all costs or damages or failure to permit the RTA access to the books and records shall constitute a waiver of the rights of the Contractor Subcontractor and Supplier to Claim or be compensated for any damages, additional

time or money under this Contract.

- G. At a minimum, the following documents, including the machine readable electronic versions, shall be available for inspection, audits, and/or copying:
1. Daily time sheets and all daily reports, Supervisor's reports, and inspection reports;
 2. Collective bargaining agreements;
 3. Insurance, welfare, and benefits records;
 4. Payroll registers;
 5. Earnings records;
 6. All tax forms, including payroll taxes;
 7. Material invoices and requisitions;
 8. Material cost distribution worksheet;
 9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
 10. Contracts, purchase orders and agreements between the Contractor and each Subcontractor and Supplier;
 11. Subcontractors' and Suppliers' payment certificates;
 12. Correspondence, including email, with Subcontractors and/or Suppliers;
 13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
 14. Canceled checks (payroll and vendors);
 15. Job cost reports, including monthly totals;
 16. Job payroll ledger;
 17. Certified payrolls;
 18. General ledger;
 19. Cash disbursements journal;
 20. Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes;
 21. Take off sheets, calculations, quotes, other financial data to support change proposals, request for change order and/or claims;

22. Financial statements for all years during the Contract Time. In addition, the RTA may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;
23. Depreciation records on all Contractors', Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;
24. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries;
29. All submittals; and,
30. All other documents, including email, related to the Project, Claims, or Change Orders.
31. The Contractor shall mark any documentation it considers proprietary or confidential accordingly. Such information will be treated as such by RTA; however, the RTA cannot ensure that this information will not be subject to release pursuant to a public disclosure request. In the event the RTA receives a request for such information, the RTA will immediately advise the Contractor and will not release the requested information for a period of not less than ten (10) days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the information in response to the public disclosure request.

3.26 WARRANTY

Without limiting other applicable warranties, the Contractor shall guarantee all material, equipment, design and workmanship of the Vessels and/or the Contract Work furnished by him, or any Subcontractors, suppliers or vendors, against any deficiency, imperfection, fault, inferiority or defect in design, material or workmanship, or the failure of the same to meet the terms of the Contract Documents for a period of one (1) year

(and any additional optional years per Contract) following the date of Final Acceptance of the Vessels by the RTA.

A standard manufacturer's warranty will be provided on the propulsion machinery (main engines and reductions gears) of no less than one year duration after Final Acceptance.

At RTA's option, any warranties will be provided by and processed through the Contractor.

Any items of design, material or workmanship found defective, or found not to operate in accordance with the requirements of the Contract, shall be repaired or replaced by the Contractor at the Contractor's expense.

As used herein "Defect" means (a) a material variance between the Vessels as delivered and the Vessels as required in this Contract, the Plans and Specifications, modified by mutually approved change orders, (b) an instance in which the Contractor's design or workmanship in the Vessels is not equal to or better than the general standard of design or workmanship that prevails in the commercial passenger only Vessels industry, or (c) a defect in workmanship, design or materials under normal use and service provided.

The Contractor shall furnish and assign to the RTA all warranties, including manufacturer's warranties, specified in the RTA's Requirements, Contractor's Specifications and General Conditions or provided by the manufacturer at Final Acceptance.

Upon expiration of the Warranty Period, all remaining product guarantees or warranties as originally obtained by the Contractor for materials and equipment from vendors and suppliers shall be assigned or reassigned to the RTA. Contractor shall cooperate with the RTA to assist in enforcing the product guarantees or warranties from vendors, suppliers, and manufacturers.

The RTA shall give prompt notice to Contractor of "Defects" on the Vessels.

If during the Warranty Period the RTA determines that equipment or component parts fail to satisfy the terms of the warranty, the Contractor must promptly repair or replace the failed equipment or component part to the satisfaction of the RTA.

If, in the opinion of the RTA, immediate repairs or replacements are essential to keep the Vessels on its scheduled operations, these repairs may be made by the RTA and the reasonable costs of these repairs may be back-charged to the Contractor. The RTA shall give prompt notice to the Contractor that the immediate corrective action is being taken and provide clear documentation of the deficiency, the action taken and the cost attributable to the deficiency. RTA shall provide a process spreadsheet for such occurrences.

If immediate repairs are not necessary, the Contractor shall be notified and given fourteen (14) calendar days to examine and provide a written plan of rectification complete with a detailed time schedule, subject to the approval of the RTA. If the defects are not addressed sufficiently or a detailed rectification plan is not provided by the Contractor and approved by the RTA within this period, the RTA may correct the defects and back-charge reasonable correction costs, including labor, to the Contractor.

Immediately prior to expiration of the warranty period set forth in this subsection and prior to Contract Completion and payment on the Contract, a Warranty Survey shall be conducted for the purpose of determining remaining deficiencies to be corrected in compliance with the requirements of the warranty. The Survey shall be made by the RTA and Contractor's representative(s). The time and place for the Warranty Survey shall be at the convenience of the RTA, having due consideration for the Vessels' schedule and commitments. All fees/expenses required by Regulatory Bodies for their participation shall be borne by the Contractor.

For determination of underwater deficiencies, RTA, at its expense, may dry-dock the Vessels or carry out an underwater survey, during the warranty period. RTA shall pay for the haul day, re-float day and any days required to accomplish the Vessels' normal dry-docking maintenance; provided, however, that if a warranty deficiency is discovered which requires additional dry-docking time, the Contractor, in addition to the cost of the correction of the warranty deficiency, shall pay for each additional dry-docking lay day due to correcting the warranty deficiency. If it becomes necessary to dry-dock the Vessels solely for the correction of a warranty deficiency, the Contractor shall be liable for the entire dry-docking charge required for correction of the warranty deficiency as well as the cost of remedying the warranty deficiency.

Should any disagreement arise in connection with warranty deficiencies, the Contractor may dispute any action taken by RTA in the manner set forth in, and subject to the terms of § 10. Claims and Litigation.

The rights and remedies provided in this Section are in addition to, and not in substitution for any rights and remedies which RTA might have as a matter of law or equity or otherwise under the Contract Documents. The failure of RTA to exercise the rights and remedies conferred upon it hereunder shall not constitute a waiver of any of its rights or remedies at any subsequent time. Contractor warrants and does not disclaim the warranties of fitness for a particular purpose or merchantability and any associated implied warranties.

3.27 WORKMANSHIP

All workmanship shall be performed to the standards of the commercial passenger Vessels shipbuilding industry, the applicable requirements of Regulatory Bodies, and as further set forth in the Contract Documents.

SECTION 4. PROJECT SCHEDULE

4.1 GENERAL

Within fourteen (14) days of Contract execution, the Contractor shall prepare and submit to the RTA for approval a resource loaded schedule as described below. The schedule, after review and comment by the RTA will become the Project Schedule. The detailed Project Schedule shall be prepared by the Contractor's "in-house" supervisory personnel. The Project Schedule should not deviate significantly from the preliminary schedule submitted with the Contractor's proposal. The completed Project Schedule shall define the operations required to bring the entire work to Delivery Acceptance by the scheduled Delivery Acceptance date and within the allotted time.

The Contractor warrants that the Project Schedule is the Contractor's committed plan to complete all work within the allotted time and assumes responsibility for prosecution of the work as shown. The Contractor shall utilize the Project Schedule in planning, scheduling, coordinating, performing and controlling the work under this Contract (including all activities of subcontractors, equipment vendors, and suppliers.)

The purpose of the Project Schedule shall be to:

- A. Assure adequate planning, scheduling and reporting during execution of the work by the Contractor;
- B. Assure coordination of the work of the Contractor and all subcontractors;
- C. Assist the Contractor and RTA in monitoring the progress of the work and evaluating proposed changes to the Contract and the Project Schedule; and
- D. Assist the Contractor and RTA in arriving at true value for the Contractor's Milestone Payments. NOTE: The Contractor's Applications for Payment shall be accompanied by its Project Schedule reflecting an update corresponding to the date of the Milestone Payment. Payment will not be made to the Contractor without this updated Project Schedule.

The Project Schedule shall be developed to the work item level. "Work Item" refers to an item of work which may be readily related to the Contract's technical specifications (i.e., install fire pump), which performance may require the release of several "work authorizations."

The Contractor shall provide the schedule to the RTA in both electronic and hard copy format. The Contractor shall also provide the RTA and its representatives with wireless internet connectivity at Contractor's site and access to a laser printer that shall be provided by the Contractor in the RTA Project Office to run the schedule, schedule updates, reports, and analyses.

4.2 SCHEDULE REQUIREMENTS

The Project Schedule shall incorporate labor, equipment and quantity resource data as described below. The Project Schedule shall cover the time from Notice to Proceed with Contract Design to the Delivery Acceptance date. The Project Schedule shall be

itemized in sufficient detail to indicate all activities required for completion of the work including but not limited to the following:

- A. Administration covering proposed monthly meeting dates
- B. Design major milestones from Contractor
- C. Engineering major milestones from consolidated design efforts
- D. Submittals
- E. Procurement, including all long lead time items, propulsion units, emission reduction system, aluminum, outfitting and generator sets
- F. Construction broken down into modules or other Contractor defined easily identifiable units
- G. Inspection and testing (including separate and clear identification of inspections and tests requiring Regulatory Body witness)
- H. Equipment, dry-dock and facility utilization
- I. Trials, delivery, and acceptance tests
- J. Regulatory approvals

Activities in the Project Schedule will be grouped into summary activities. The number of summary activities, inclusive of both Design and Construction work activities, shall be no less than fifty (50) per Vessels and no activity having duration of more than 30 calendar days. The summary activities shall be distinct work packages representing the Contractor's work plan and methods. Exceptions to these requirements will be allowed provided the intent is preserved. The RTA will make the final determination as to whether the intent is preserved in the Contractor's proposed approach. If no other agreement is reached the requirements will stand as written.

All activities that are without successors shall have a terminating link to the node for Notice to Proceed.

The following shall be included for each schedule activity:

- A. Performance responsibility by Contractor department, subcontractor, vendor, RTA, etc. All abbreviations or codes shall be fully described in a legend attached to the Project Schedule.
- B. A numeric designation (i.e. cost code, WBS number) identifying the item corresponding to labor payment items

All non-field activities shall be identified through codes or other identification so that they are readily distinguished from field construction activities.

The Contractor shall be responsible for assuring that subcontractor work scope and sequencing is included in its Project Schedule.

Failure by the Contractor to include any element of work required for performance of the Contract shall not excuse the Contractor from completing all work by the scheduled Delivery Acceptance date.

4.3 SCHEDULE UPDATES

The Project Schedule shall be updated on at least a monthly basis and whenever a Milestone is submitted for payment. The updated Project Schedule shall include the dates activities were actually started and when they were completed, the physical percentage of work complete, and the estimated remaining duration for each activity in progress. The physical percentage of work complete shall be calculated by using the quantity information contained in the computerized schedule database.

The Contractor shall also prepare a written narrative report that will include a description of the amount of progress during the last reporting period in terms of completed activities, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates and an explanation of corrective action taken or proposed. The report shall include a forecast of key activities to be completed, started and worked during the next 45 calendar days.

The monthly submission of the schedule reports and plotted diagrams shall be an integral part and basic element of the progress upon which payments will be made pursuant to Section 9. The Contractor shall be entitled to payments only upon approval of the corresponding schedule update submitted with the Application for Payment. The Contractor is responsible for furnishing all of the information necessary to ascertain actual progress. Failure or refusal to furnish the required information and schedules shall constitute a basis for withholding any such payments until the required information is furnished and the schedule is prepared or revised on the basis of such information.

The initial and each updated Project Schedule shall be provided in electronic format and hard copy format suitable for use the RTA. The files provided shall be a complete copy of all information contained in the basic schedule.

Updating the Project Schedule to reflect actual progress made shall not be considered a revision to the Project Schedule.

In addition to the required schedule reports, the Contractor shall prepare a log which shall list all drawing and other deliverables required for the entire Contract period. This log shall be delivered on an excel spreadsheet, and will include, at a minimum, the following information for each item:

- A. Submittal Item Number
- B. Submittal Item Description
- C. Related Activity ID Number and Description (including, as a minimum, procurement and production activities)
- D. Planned Date of Initial Submittal
- E. Actual Date(s) of Initial (and Subsequent) Submittals

- F. Planned Date of RTA's Initial Response
- G. Actual Date(s) of RTA's Initial (and Subsequent) Responses
- H. Status of RTA's Initial (and Subsequent) Responses - i.e., Approved, Rejected, Approved as Noted, etc.
- I. Comments as to Reason for Approval, Rejection, etc.

This log shall be updated continuously by the Contractor to incorporate each and every submittal of the same time and this information shall be included in the Contractor's weekly Progress Report. If requested by the RTA, the Contractor will also supply the information contained in this log in electronic format suitable for use on by the RTA.

4.4 SCHEDULE REVISIONS

If, as a result of the schedule updates, the schedule no longer represents the planned prosecution or progress of the remaining work, the RTA may request revision to the Project Schedule.

The Contractor may also request revisions to the Project Schedule in the event the Contractor's planning for the remaining work is revised. If the Contractor desires to make changes in the Project Schedule to reflect revisions in its method of operating and scheduling of the work, the Contractor shall notify the RTA in writing, stating the reason for the proposed revision.

If revision to the Project Schedule is contemplated by either the Contractor or the RTA, the other party shall be so advised in writing at least seven (7) calendar days, prior to the next schedule update, describing the revision and setting forth the reasons thereof.

RTA-directed revisions to the Project Schedule will not be incorporated into the Project Schedule without written notice to the Contractor, who shall respond in writing within ten (10) calendar days, either agreeing with the RTA's proposed revision, or setting forth justification why it should not be accomplished.

Contractor-requested revisions to the Project Schedule will not be incorporated into the Project Schedule without written approval by the RTA who shall respond in writing within ten (10) calendar days, either agreeing with the Contractor's proposed revision, or setting forth justification as to why it should not be accomplished. The Contractor's request shall include an analysis of the cost and schedule impacts of the revision under consideration. If the Contractor's justification for incorporating revision is acceptable to the RTA, such revision will be incorporated in the Project Schedule. The RTA's failure to respond in writing within ten (10) calendar days will be deemed to be acceptance of the Contractor-requested revisions, and such revisions will be incorporated into the Project Schedule by the Contractor.

Revisions to the labor assigned to each schedule activity shall be reported in the formal Project Schedule updates.

Should the prosecution of the Work during normal work days be discontinued for any reason, for more than two calendar days, the Contractor shall notify the RTA at least twenty-four (24) hours in advance of resuming operations.

4.5 TIME IMPACT ANALYSIS

When Contract modifications are initiated by either the RTA or the Contractor, a change to the Project Schedule may be experienced. If the change indicates that a revision of the Project Schedule and related resources is needed, the Contractor shall submit to the RTA a written Time Impact Analysis illustrating the influence of each Contract Modification on any of the interim completion dates and the scheduled Delivery Acceptance date. The RTA may elect to perform an independent Time Impact Analysis of any change. If the RTA performs such an analysis, the results will be provided to the Contractor.

The Time Impact Analysis shall demonstrate the time and resource impact to each and every affected activity in the Project Schedule utilizing the most recent update as the basis for measuring the change. The activity durations used in the Time Impact Analysis shall also be those included in the latest update unless adjusted by mutual agreement. If requested by the RTA, Time Impact Analysis information shall be provided in electronic format suitable for use by the RTA.

Activity delays shall not automatically mean that an extension of the scheduled Delivery Acceptance date is warranted or due the Contractor. A Contract Modification or delay may not affect existing critical activities or cause non-critical activities to become critical.

Each Time Analysis shall be submitted to the RTA within seven (7) calendar days before notice of direction for a Contract Modification is given to the Contractor, or the Contractor provides notice of an impact to the RTA.

Approval or rejection in writing by the RTA of each Time Impact Analysis will be made within seven (7) calendar days after receipt. No response from RTA implies Contractor may proceed. Upon approval of the Contractor's Time Impact Analysis, and if so warranted under the terms of the Contract, a Contract Modification will be issued incorporating the Time Impact Analysis and any warranted extension to interim completion dates or to the scheduled Delivery Acceptance date. Subsequent weekly schedule updates shall then reflect the agreed upon changes to the Project Schedule (and related resources) as well as the approved time extension.

SECTION 5. CONTROL OF MATERIAL

5.1 MATERIAL SPECIFICATION, SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

The materials used shall meet all requirements of the Contract. All materials incorporated in the Work covered by this Contract are to be new, of current production, of the specified or most suitable grade of their respective kinds for the purpose and, except where otherwise specifically provided for in the Contract for particular items, currently supported by readily available spare parts and as required by the Contract. All materials shall be free from imperfections of manufacture and from defects that adversely affect appearance or serviceability. All materials shall be suitable for use in a marine environment and for their intended use.

All material used throughout the Vessels which are subject to Regulatory Body approval shall meet the requirements of the Regulatory Bodies.

Materials to be supplied shall be identified in the Contractor-developed Technical Specifications and/or on drawing schedules of material and/or on drawing equipment lists. Detailed purchase technical specifications shall be provided for particular items of equipment. Materials shall be described to the extent required for ordering from suppliers, including brand name, model, type, size and similar information as applicable to the item.

No materials shall be ordered until after Notice to Proceed has been authorized by the RTA in accordance with § 3.7. Any materials ordered prior to such notice to proceed are at the Contractor's sole risk.

5.2 SAMPLES

Samples of materials shall be submitted for approval when so directed by the RTA or indicated in the Contract Documents. The RTA may order such sampling at its sole discretion. Any work in which untested materials are used after such direction from the RTA, and which the RTA has not approved in writing, is subject to removal at the RTA's direction and at the Contractor's expense.

All interior finishes require approval by RTA and shall be inspected for quality, texture and color.

5.3 MATERIAL/EQUIPMENT CERTIFICATION

Where materials are required by the Contract to conform to certain standards and requirements, such as those of the USCG, ASTM, AISI, ANSI, FCC, USPHS, or UL, the following provisions shall apply:

A. These requirements shall be clearly indicated on the Contractor's purchase order.

B. All items requiring U.S. Coast Guard approval shall be listed in COMDTINST M16714.3 (old CG-190), "Equipment Lists," or a USCG approval letter or certificate shall be furnished to the RTA upon request.

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- C. Copies of materials certifications, test reports, metal analyses, welding inspections, nondestructive test data, welding procedures and test schedules shall be collected by Contractor and provided to the RTA as requested.
- D. Provision of invoices, certificates of compliance or other documentation contending that furnished materials comply with standards and other requirements applicable to the materials shall not relieve the Contractor of its responsibility to perform inspections, tests, research or other validation work necessary to ensure that the materials do in fact comply with the requirements.

5.4 PROTECTION AND STORAGE OF MATERIAL

The Contractor shall be responsible for the protection from damage or loss of all material, supplies and equipment intended for use and installed on board the Vessels until Delivery Acceptance of the Vessels by the RTA. The RTA may reject any material improperly stored or handled. All costs and expenses related to the protection and storage of material, supplies and equipment shall be borne by Contractor.

Due consideration shall be given to the nature of the item during handling and storage. Materials shall be stored out of the weather in a manner that assures the preservation of material quality and fitness for the work, except structural steel products that are not susceptible to loss of quality and fitness for the work when exposed to the weather.

All finished surfaces shall be protected by appropriate means. Surfaces damaged or marred shall be replaced or repaired by the Contractor to the satisfaction of the RTA at the Contractor's expense.

The RTA may require that stored materials, even though inspected before storage, again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection.

5.5 RTA FURNISHED MATERIAL

There is no intent to utilize RTA Furnished Equipment. Should it become necessary for RTA Furnished Equipment to be utilized, the provisions for such use shall be the subject of a Change Order.

5.6 "OR EQUAL" MATERIAL

In cases where material items are explicitly called out by brand name in the RTA's Requirements without the use of the "or equal" phrase; the items so specified must be provided.

Where a specific brand name and/or model is required by the Proposal Design Package, followed by the term "or equal," the indicated brand name shall be provided unless RTA approval of an "or equal" product is obtained. To request RTA approval of an "or equal" product, the Contractor must submit a written request for substitution to the RTA.

The RTA shall provide a written determination regarding the request for use of the "or equal" item. The RTA's determination shall be considered final. For use of an "or equal"

item to be considered approved, it must have the unambiguous written approval of the RTA. The RTA's approval of an "or equal" item allows the Contractor the option of procuring that item. In each case where the request is disapproved by the RTA, the Contractor shall provide the specified material at no extra cost to the RTA.

Approval of "or equal" by RTA does not relieve Contractor of warranty requirements or any other provision of the Contract.

This Section does not waive or modify other applicable requirements, such as Buy America.

It shall be the Contractor's responsibility to design, integrate, test and incorporate the "or equal" item in the work. All costs to the Contractor as a result of the use of the "or equal" item, over and above the cost of the originally specified brand name item, shall be at the Contractor's expense. The Contractor shall not be entitled to extension of time associated with the use of an "or equal" product. RTA shall not be responsible for any delay resulting from a substitution request.

SECTION 6. CHANGES TO THE CONTRACT

6.1 GENERAL

- A. The RTA reserves the right to make, at any time, reasonable changes in the requirements, specifications, drawings, character, or quantities of work for the Vessels. Such increases or decreases and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to accept and perform the work as altered, under the conditions stated in the original Contract and any change order associated with the RTA's changes per the change order procedures.
- B. All changes to the Contract must be made in writing and signed by the Regional Transit Authority Executive or its designees. No oral statement by any person shall change or modify the Contract. All changes to the Contract shall be made in accordance with the provisions of this Section 6.
- C. All Change Order work shall be performed in accordance with the original Contract requirements unless modified in writing by the RTA. The Contractor shall cooperate with the RTA in keeping complete records of the cost and time to perform the work.
- D. Any written Field Directive, response to Request For Information, or other directive, direction, instruction, interpretation, or determination (hereinafter referred to as "Direction" for the purposes of Section 6), provided by the RTA is not considered a Change Order, a change to Contract requirements, and shall not constitute, in and of itself, entitlement to an adjustment in Contract Price and/or Contract Time.
- E. To the extent the Contractor believes it is entitled to any additional money or time for any reason the Contractor shall submit a Request for Change Order to the RTA as more fully described in Section 6, Changes to the Contract.
- F. As a prerequisite for any request for a change order, Contractor shall have provided notice of the act or occurrence as provided in § 10.1.
 - 1. If the Contractor believes any of the following events entitles the Contractor or its Subcontractors or Suppliers to additional money or time, the Contractor must file a Request for Change Order in accordance with the requirements set forth in the Contract.
 - a. Written field directive
 - b. Response to a request for information
 - c. Comments on a submittal
 - d. Differing site condition
 - e. Acceleration or constructive acceleration
 - f. Suspension of the work

- g. Delay, inconvenience, disruption of schedule, loss of efficiency or productivity
 - h. RTA caused stand-by
 - i. Force majeure
 - j. Conflicts, ambiguities, inconsistencies, and/or problems arising from the contract documents
 - k. Any other directive or direction, written or oral, from the RTA
 - l. Any other reason for which the contractor believes it is entitled to additional money or time
- G. The Contractor shall not be entitled to any change in the contract price and/or contract time under the following conditions or events:
- 1. 2. They were caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the work, failure to provide labor, materials or equipment in a timely manner, and failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.
- H. The Contract requirements for time and price impacts related to change orders are set forth in Section 6 and § 8.3B.

6.2 CONTRACTOR'S REQUEST FOR A CHANGE ORDER

A. Notice of intent to submit a request for change order.

- 1. The Contractor shall provide the RTA's Representative with the written notice that the Contractor intends to submit a request for change order no later than ten (10) days, except as specified below for differing site conditions, after any direction, instruction, interpretation, and determination by the RTA and/or the onset of any event or impact to the project.
- 2. The Contractor shall include the following information in the notice of intent to request a change order:
 - a. The date, circumstances, and source of the direction, instruction, interpretation, determination by the RTA and/or the event or impact to the project.
 - b. Reasonable order of magnitude estimate of the change to the contract price;
 - c. Reasonable order of magnitude estimate of the time impact to the contract time; and

- d. Contractual provisions and substantive basis to support the request.

B. Request for Change Order.

1. Within twenty-one (21) days after the direction and/or the onset of the event or impact to the project, the Contractor may request an extension of time for filing its request for change order. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide all documentation required in its request for change order.
2. Unless the RTA's Representative issues written notice authorizing the Contractor additional time to submit the request for change order, the Contractor shall provide, in writing, a detailed request for change order to the RTA's representative no later than thirty-five (35) days after the direction and/or the onset of the event or impact to the project.
3. The request for a change order shall include:
 - a. Specific dollar amount covering all costs associated calculated in accordance with Section 6;
 - b. Specific request for time extension (number of days);
 - c. A copy of the written notice of intent, including all attachments; and
 - d. All documentation supporting the request for a change order, including but not limited to all cost records, schedule analysis, and the documents identified in § 3.25, Contractor and Subcontractor Books and Records; Audit, that are in any way relevant to the Contractor's request for change order.
 - e. All change orders shall include an estimate of the impact of the change(s) to the weight and center of gravity of the Vessels. The Contractor is required, as part of the estimate, to address any adverse impact that could prevent the Vessels from performing and meeting the stated mission and operating profile as a result of the proposed change order. When the change order is approved by the RTA, the weight and center of gravity estimate is fixed, and any change thereafter is to the account of the Contractor. The impact(s) of change orders to the weight and center of gravity shall be included and individually summarized in each weight and center of gravity update provided by the Contractor.

The Contractor shall certify that the data submitted is accurate, complete, and current as of the time of its submission and that such data will continue to be accurate and complete during the performance of the work covered under the proposed change document. The RTA shall in no way be bound to make payment based on the estimate.

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- f. Upon written request from the RTA for an estimate of costs as described in this Section and/or for an analysis by the Contractor of the impact on the schedule of a change. The Contractor shall provide an estimate or analysis, as pertinent, in no more than ten (10) calendar days from receipt of the request.
- C. RTA's response to Contractor's request for change order.
 - 1. The RTA will make a written determination with respect to the Contractor's request for change order within twenty (20) days of receipt of said request, unless one of the following activities occurs.
 - a. The RTA may request additional information and specify a time period not less than ten (10) days for receipt of the information. The Contractor shall comply with the RTA's request for additional information.
 - b. The RTA may inform the Contractor that additional time is needed to review the Contractor's request for change order and identify a date certain when a decision will be rendered.
 - 2. If the RTA requests additional information, the RTA will make a written determination within twenty (20) days receipt of Contractor's additional information.
 - 3. If the RTA does not make a determination within the applicable time period, the request for change order is deemed denied.
- D. Approval of request for change order and execution of change order. If the RTA determines that a change order is necessary, the parties shall negotiate acceptable terms and conditions and execute a bilateral change order.
- E. Contractor procedure upon denial or deemed denial of a request for a change order. If the Contractor disagrees with the denial, the Contractor's sole remedy shall be to file a fully documented claim within thirty (30) days of deemed denial or the Contractor's receipt of the denial in accordance with Section 10, Claims and Litigation.
- F. Contractor's obligation to continue to work. Pending resolution of the Contractor's request for a change order, the Contractor shall continue to perform all work including, at the written request of the RTA that work associated with the pending request for change order. The Contractor shall maintain its progress with the work.

6.3 CHANGE ORDERS

A. Bilateral Change Orders

1. If the RTA and Contractor reach agreement on the terms and conditions of any change in the work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a Change Order and signed by both parties. Such bilateral Change Orders shall represent full and complete payment and final settlement of all changes, claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Change Order, or related to the events giving rise to the bilateral Change Order.

B. Issuance of Change Order

1. Bilateral Change Order.

- a. No later than 30 days from the satisfactory completion of any additional work, the RTA shall prepare and issue to the Contractor a bilateral Change Order in accordance with the agreed upon terms and conditions, including any adjustment in the Contract Price and Contract Time.

2. Determination of satisfactory completion.

- a. As used herein, "satisfactory completion" means that the RTA's representative shall have confirmed in writing that all tasks have been completed to the reasonable satisfaction of the RTA, including submittal by the Contractor of all required time and cost documentation. Satisfactory completion does not mean substantial completion.
- b. The issuance and execution of a bilateral change order by the RTA shall not relieve the Contractor of its obligations to comply with the requirements of Section 9, Measurement and Payment.

- C. Change documents shall be in writing on a mutually acceptable form and contain a description of the work to be performed or deleted, the specific requirements or specifications to be changed, the materials to be used, construction requirements, the method of measurement, basis of payment. Dollar value or estimated dollar value of the change, and any adjustment in Contract Time. These documents will provide for the RTA's and Contractor's signature and acceptance or acknowledgment of receipt. Change documents shall be deemed to include, and provide full compensation to the Contractor for, all impact, delay or other direct or indirect costs associated with the change.

6.4 RTA REQUEST FOR A CHANGE PROPOSAL

- A. Request. The RTA may request a written change proposal from the Contractor for a change in the Contract Work.
- B. Contractor's Proposal. Contractor shall submit its written change proposal within the time specified in the RTA's request, though such time must be no less than 10 days. The change proposal shall represent the Contractor's offer to perform the requested work, and the pricing set forth within the proposal shall represent full, complete, and final compensation for the proposed change and any impacts to any other contract work, including any adjustments in the Contract Time. When the price cannot be fixed, the RTA shall require the Contractor to submit an estimate of actual cost to the Contractor, including profit or mark-up to the Contractor, regarding the proposed work. The Contractor will be required to substantiate the estimate of all costs with a complete cost breakdown. The breakdown shall include, but not be limited to, the items required for the schedule. Crew and craft productivity rates for the work are also to be included in the breakdown, along with a historical basis for the productivity rates. The productivity rates, if possible, will be based on similar work under the Contract.
- C. RTA's acceptance of Contractor's proposal.
1. If the RTA accepts the change proposal as submitted by the Contractor or as negotiated by the parties, the RTA shall notify the Contractor in writing of its acceptance of the proposal and direct that the change in the work be performed.
 2. Contractor shall not perform the work identified in the change proposal until receipt of written authorization from the project representative.
 3. Both parties shall acknowledge acceptance of the terms of a negotiated change proposal in writing.
 4. Once the RTA and Contractor have agreed on the terms of a negotiated change proposal, the negotiated change proposal shall represent full and complete compensation and final settlement of all claims for all (1) time; (2) direct, indirect, and overhead costs; (3) profit; and (4) costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and/or any other costs or damages related to any work either covered or affected by the change proposal, or related to the events giving rise to the change proposal.
- D. Execution of a bilateral change order. After acceptance of the change proposal or acceptance of the negotiated change proposal, the RTA shall direct the Contractor to perform the work in accordance with the agreed upon terms; thereafter, the parties shall execute a bilateral change order in accordance with the terms of the change proposal or negotiated change proposal.

- E. Issuance of change order. Any bilateral change order shall be issued in accordance with § 6.3.C, Issuance of Change Order.
- F. Negotiated Composite Straight Time Hourly Rate and Composite Overtime Hourly Rate. The Contractor shall provide a composite straight time hourly rate and a composite overtime hourly rate for the following in the spaces provided on the Price Proposal form included in the RFP:
1. Work performed by unskilled labor subsequent to receiving Notice to Proceed with Construction.
 2. Work performed by other than unskilled labor subsequent to receiving Notice to Proceed with Construction.

The composite rates required in 1 and 2 above, which are subject to approval of RTA, will be used to price all negotiated change orders throughout the Contract Time. The method of developing these composite rates, including the determination of labor mix, fringe benefits, general overhead, profit and the definition of direct and indirect labor, shall be consistent with the methodology used in development of price of the overall project.

Wages paid on the project are subject to applicable prevailing wage laws and Contractor is solely responsible to pay wages consistent with such requirements. RTA shall have no liability for Contractor's failure to pay applicable prevailing wages.

SECTION 7. LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.1 LAWS TO BE OBSERVED

The Contractor shall make a reasonable effort to keep fully informed of all federal, state and local laws, ordinances, codes and regulations having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct or content of the Work including without limitation, United States Coast Guard regulations. The Contractor warrants that it shall at all times observe and comply with all such laws, ordinances, or regulations, orders and decrees, and shall protect and indemnify the RTA and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether such violation is committed by Contractor, its agents, employees, subcontractors, vendors or suppliers.

The Contractor warrants that all operational practices of the Contractor, and all workmanship and material, equipment and articles used in the performance of the Work hereunder shall be in accordance with all applicable federal, state and local laws and regulations, including but not limited to all safety orders, rules and recommendations of the state as applicable to the Work to be done under this Contract and they shall be obeyed and enforced by the Contractor.

7.2 PERMITS, LICENSES, TAXES AND ENCUMBRANCES

The Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the Contractor shall pay all federal, state and local taxes incurred by the Contractor in the performance of this Contract. Proof of payment of these taxes is a condition precedent to final payment by the RTA under this Contract.

If any work under the Contract is performed in such a manner or place as to cause imposition of any lien, sales tax or duty assessment, foreign or domestic, against the Vessels or the RTA, the Contractor shall be responsible for payment of same at the Contractor's expense.

If the Vessels becomes subject to a lien or claim of any kind as a result of the Work performed under the Contract, the Contractor, upon notice by the RTA, shall immediately cause the lien or claim to be removed.

7.3 HEALTH AND SAFETY PROVISIONS

The Contractor shall provide and maintain in a neat and sanitary condition all areas of work and space occupied or used by its employees and RTA employees, the agents of Contractor or RTA and any third-parties and all shall comply with the requirements of the state and local boards of health, or other bodies having jurisdiction or health or safety issues.

Attention is directed to federal, state and local laws, rules and regulations concerning construction safety and health standards.

The Contractor shall provide and be solely responsible for all firefighting protection on board the Vessels at all times prior to Delivery Acceptance of the Vessels by the RTA.

The Contractor shall prepare and provide to the RTA a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the "Safety Program." The Contractor shall submit a copy of its "Safety Program" and the Subcontractor's "Safety Program" to the RTA within fourteen (14) days after the Contractor signs the Contract. The RTA's review of such programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Contractor's sole responsibility for site safety.

The Contractor shall conduct a weekly safety meeting with all Subcontractors and others performing Work hereunder to discuss general and specific safety matters. The Contractor shall provide upon request, notice of each meeting to the RTA. At the RTA's request the Contractor shall provide the RTA with a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

7.4 RESPONSIBILITY FOR DAMAGE, CLAIMS AND INSURANCE

7.4.1 INDEMNIFICATION

- A. The Contractor shall protect, defend, indemnify, and hold harmless the RTA, its officers, officials, employees, and agents, from any and all claims, demands, suits, legal or administrative proceedings, penalties, losses, damages, response costs, judgments, or costs of any kind whatsoever, including but not limited to injury to or death of persons, or damage to, or loss of property and including attorneys' and expert fees and costs, (hereinafter "Claims"), arising out of or in any way resulting from:
 - a. The breach or alleged breach of the Contract (or any representation or warranty herein) by the Contractor, its employees, officers, agents, Subcontractors, suppliers or any other persons or entities performing the Contract Work for whom or which the Contractor may be contractually or legally responsible; or
 - b. The failure or alleged failure by the Contractor or its employees, officers, agents, Subcontractors, suppliers or any other persons or entities for whom or which the Contractor may be contractually or legally responsible, to comply with any applicable environmental laws or other legal requirements (including legal requirements regarding handling, generation, treatment, storage, transportation and disposal of hazardous materials) or Regulatory Agencies in performing the Contract Work; or

- c. The fault or alleged fault, including negligent acts or omissions, willful misconduct or strict liability of Contractor or its employees, officers, agents, Subcontractors, suppliers or any other persons or entities for whom or which the Contractor may be contractually or legally responsible to the maximum extent permitted by law as enacted or as hereinafter amended, but not for claims for personal injury or property damage caused by the sole or willful misconduct of an indemnified party; or
- d. The performance of or failure to perform this Contract, by the Contractor, its employees, officers, agents, Subcontractors, suppliers or any other persons or entities for whom or which the Contractor may be contractually or legally responsible; or

B. The Contractor's obligations under this section shall include, but not be limited to:

- 1. The duty to promptly accept the tender of defense and provide defense to the RTA, Transdev and LADOTD at the Contractor's own expense.
- 2. To the maximum extent permitted by law, the Contractor shall indemnify and defend the RTA from and be liable for all damages and injury which shall be caused to RTAs of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the work specified.

C. In the event the Regional Transit Authority incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

7.4.2 RESPONSIBILITY FOR RTA PROPERTY.

The Contractor shall assume full responsibility for and shall indemnify the RTA against any and all loss or damage of whatsoever kind and nature to any and all RTA property, including any equipment, supplies, accessories, or parts furnished, while in the Contractor's custody and care for storage, repairs, or services to be performed under the terms of this Contract, resulting solely from the negligent acts or omissions of Contractor, any subcontractor, or any employee, agent or representative of Contractor or subcontractor.

7.4.3 INSURANCE.

Prior to execution of the Agreement, the Contractor shall file with Regional Transit Authority certificates of insurance and endorsements from the insurer(s) certifying to the General Conditions RFP Exhibit 2

coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that Regional Transit Authority receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Contractor shall notify the Authority at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Contractor shall maintain during the entire Agreement period and for three (3) years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. Documentation of coverage shall be provided on each insurance renewal date. The Contractor shall, upon demand of the Regional Transit Authority, make available to the Regional Transit Authority at Contractor's local office in the Regional Transit Authority all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to the Regional Transit Authority shall entitle the Regional Transit Authority to suspend or terminate the Contractor's work hereunder. Suspension or termination of this Agreement shall not relieve the Contractor from its insurance obligation hereunder.

The Contractor shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, the Regional Transit Authority shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor shall continue coverage either through (1) policy renewals for not less than three (3) years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than three (3) years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.

If, in order to meet the requirements of this Section, the Contractor must rely on the insurance to be provided by one or more subcontractor, then such subcontractor(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include RTA, Transdev, and Louisiana Department of Transportation and Development (LADOTD), and Contractor as additional insurers on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation.

Provided the affected insurance policies permit the following waiver, without voiding coverage, Contractor and the Authority waive all rights against each other to subrogation for damages covered by property insurance.

1. Insurance

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All required insurance, with the exception of Workers' Compensation, shall include Regional Transit Authority (RTA), their respective agents, officers, employees; Louisiana Department of Transportation and Development (LADOTD). Transdev in service to RTA, agents, directors, officers, employees, affiliates and subsidiaries as Additional Insurers.

All policies shall be primary and non-contributory and include a waiver of subrogation in favor of New Orleans Regional Transit Authority, their respective agents, officers, and employees; and the Louisiana Department of Transportation and Development (LADOTD).

All policies shall be endorsed to provide RTA with thirty (30) days' Notice of Cancellation, ten (10) days in the event of non-payment.

A Certificate of Insurance will be required for all policies with the exception of Builder's Risk prior to any work being performed. The Builder's Risk Policy shall be delivered to RTA prior to any work being performed. All insurance companies will possess an A.M. Best rating of A VII or better.

Contractor agrees to obtain and maintain at all times, at its sole cost and expense, the following minimum insurance coverages:

2. Builder's Risk Insurance

i) From the time of the steel cutting or equivalent (or delivery of the RTA's Supplies, whichever is earlier) until the Vessels is completed, delivered to and accepted by The RTA, the Builder shall (in the joint names (as assureds) of the Builder and RTA) effect and maintain at no cost to RTA or Transdev, Protection and Indemnity insurance whether as a component of Builder's standard builder's risk insurance or otherwise with combined single limits of not less than \$10,000,000 confined to risks associated with the Vessels and construction of the Vessels, including associated tests and trials.

ii) .

If specifically requested by RTA, the Builder shall increase the amount insured under the policy to cover the rebuilding costs of the Vessels or such other amount as RTA may request. Any additional premium charged for this shall be paid by RTA.

The Builder shall provide RTA with copies of the insurance policy as placed.

RTA shall notify the Builder of the value of any subsequent changes in the value of RTA's Supplies for insurance purpose. Upon receipt of notice of change in value the Builder shall amend the insurance value for RTA's Supplies accordingly.

iii) Allocation of Insurance Proceeds

(1) In the event that the Vessels is at any time prior to or at delivery damaged by any insured cause and provided such damage does not constitute an actual or constructive total loss of the Vessels, the Builder shall make good such damage and shall apply any amounts recovered under the insurance referred to in Sub-Clause (i) to the costs of any repair or replacement, including repair or replacement of lost or damaged RTA's Supplies. Such damage shall be made

good so as to comply with this Contract and all repairs shall be carried out in compliance with the requirements of the Classification Society and Regulatory Authorities as appropriate without qualification.

- (2) Should the Vessels become an actual or constructive total loss from any insured cause:
- (a) The Builder and RTA may agree that a new Vessels is build or the Vessels reconstructed in accordance with the terms of this Contract provided agreement is reached in writing to an extension of the Delivery Date and/or any other necessary amendment to the Contract, in which case any amounts recovered under the insurance referred to in Sub-Clause (i) will be applied to the construction or reconstruction of the Vessels if appropriate; or
 - (b) If the Builder and RTA are unable to agree within a reasonable time on an extension to the Delivery Date and/or any other necessary amendment to the Contract as provided for in Sub-Clause (ii)(2)(a) the builder shall:
 - (i) Promptly refund to RTA the full amount of sums paid by RTA to the Builder together with interest thereon at a rate per annum from the date of payment to the date of refund; and
 - (ii) Make payment to RTA of the insured value of RTA's Supplies or alternatively, at the Builder's cost, deliver RTA's Supplies to The RTA in undamaged condition.

Once all payments have been made by the Builder to RTA in accordance with Sub-Clause (ii) (2) (a) this Contract shall be deemed terminated and all future rights and obligations of each of the Parties to the other shall cease whereupon the guarantees provided under this Contract shall be returned.

3. Workers' Compensation / Longshoreman and Harbor Workers'
Statutory Limits

Employers Liability

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limits	\$1,000,000

4. General Liability

To include Premises/Completed Operations, Blanket Contractual Liability, Personal Injury, and Advertising Injury including fire legal liability for bodily injury and property damage and Independent Contractors with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 Aggregate.

5. Automobile Liability

To include "any auto" or all Owned, Non-Owned and Hired Auto, to cover all vehicles operated by Contractor under this contract, with a minimum combined single limit of \$1,000,000 per accident for bodily injury and property damage.

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6. **Umbrella/Excess Liability**

Writing in excess of both General Liability and Automobile Liability with minimum limits of \$10,000,000 per occurrence for bodily injury and property damage. Any combination of primary and umbrella/excess insurance is acceptable to reach the minimum required limits.

7. **Professional Liability**

To include Professional Liability with a limit of liability in an amount of not less than \$1,000,000 per claim and in the aggregate and shall remain in effect for 2 years after the expiration of said Agreement.

7.5 CONTRACT SECURITY

7.5.1 PERFORMANCE AND PAYMENT BOND.

The Contractor shall furnish RTA contract security in the form of a Performance and Payment Bond for 100% of the contract price for each Vessel on forms provided by RTA before a Notice to Proceed shall be issued. The bond shall protect RTA against performance and payment loss exposure for all of the Contract Work and all Change Orders. If Contractor fails to furnish the Performance and Payment Bond, RTA shall have no obligation to issue a Notice to Proceed and may terminate the Contract.

- A. Bonds must be issued by a surety with a Best's rating of at least "A" or better and Financial Size Category of VIII or better by A.M. Best Co. The surety shall be registered with the State of Louisiana Insurance Commissioner and appear on the current Authorized Insurance List in the State of Louisiana published by the Office of the Insurance Commissioner.
- B. Contractor shall notify the surety of any changes in the work. RTA reserves the right to require additional contract security in the event the Contract Price increases beyond the amount of the bond.
- C. The Performance and Payment Bond shall be released after the Warranty Period. However, Contract Security for performance exposure shall not be exonerated by the end of the Warranty Period so long as RTA retains and unsatisfied performance or other warranty claims against the Contractor. Contract Security for payment exposure shall not be exonerated until RTA receives releases of all liens or claims of lien, the time has passed for the filing of any lien under has passed and all liens have been settled as required under Louisiana law.

7.6 CONTRACTOR'S RESPONSIBILITY FOR WORK

Until Delivery Acceptance of the Vessels by the RTA, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof of the Vessels by the action of the elements, grounding, collision, fire or from any other cause, whether or not arising from the execution of the work. The Contractor

shall rebuild, repair, restore and make good all injuries or damages to any portion of the Vessels occasioned by any cause before Delivery Acceptance of the Vessels by the RTA.

The Contractor shall provide and maintain adequate security for the entire Vessels until delivery so as to protect the Vessels from damage, fire and pilferage.

In case of suspension of work from any cause, the Contractor shall be responsible for the Vessels and shall take such precautions as may be necessary to prevent damage to the Vessels from the elements or pilferage at its expense.

7.7 NO WAIVER OF LEGAL RIGHTS

The RTA shall not be precluded or estopped by any measurement, estimate or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any measurement, estimate or certificate is untrue or is incorrectly made, or that the work or materials do not in fact conform to the Contract, or are not, in fact, required by the Contract. The RTA shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and/or payment in accordance therewith, from recovering from the Contractor or any of sureties, from either or both, such damages or remedies that the RTA may be entitled to recover by reason of Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the RTA, or any representative of the RTA, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the RTA, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by the RTA of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

SECTION 8. PROSECUTION AND PROGRESS

8.1 SUBLETTING OF CONTRACT

8.1.1 SUBCONTRACTORS AND SUPPLIERS

This Contract is between the RTA and the Contractor.

The Contractor's subcontracting shall create no contract between the RTA and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended or incidental third party beneficiaries to the Contract. The Subcontractor and Suppliers shall have no rights against the RTA by reason of its subcontract with the Contractor.

The Contractor will be responsible for performing all Work as required by the Contract. The Contract has not been written with the intent of, and the RTA shall not be a party to, defining the division of work between the Contractor and its Subcontractors and Suppliers.

The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract or contracts, or any portion thereof, or of its right, title, or interest therein, without written consent of the RTA. Contractor shall identify all major subcontractors performing work or supplying materials with a subcontract value of \$100,000 or more and the work to be performed by that subcontractor. Consent to sublet, assign or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. No subcontracts, or transfer of Contract, shall in any case release the Contractor of its liability under the Contract and Performance and Payment Bond. Contractor shall not substitute any major subcontractor(s) without the written approval of RTA.

All subcontracts shall provide that the obligations imposed on the Contractor by the Contract Documents, with respect to or in connection with the Contract Work to be subcontracted, shall be assumed by such subcontractor.

The Contractor shall furnish the RTA with copies of any and all contracts entered by Contractor and a subcontractor for work to be performed in connection with the Contract. Prices of subcontracted work shall be furnished by the Contractor. For purposes of computing subcontract percentages, the RTA shall determine the value of the subcontracts, based on contract unit prices, or upon reasonable value, if entire items are not subcontracted.

The purchase of equipment and materials produced at and furnished from established and recognized commercial plants, together with the delivery of such materials to the site of work by means of vehicles owned and operated by such plants or by recognized commercial hauling companies, shall not be considered as subcontracting under these provisions, but may be considered as subcontracting for purposes of the exercise of any rights to review records or conduct audits by the RTA.

8.1.2 SELECTION OF SUBCONTRACTORS AND SUPPLIERS

Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, and capable to perform the assigned work.

If requested by the RTA, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers are experienced and equipped to do the Work.

The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

8.1.3 RESPONSIBILITY FOR WORK OF SUBCONTRACTORS AND SUPPLIERS

The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by the RTA.

8.2 WORKERS, METHODS AND EQUIPMENT

The Contractor shall at all time employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by this Contract.

All workers and management personnel shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

All equipment which is proposed to be used shall be of appropriate size and in such mechanical condition as to meet the requirements of the work and to produce a satisfactory quality of work.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates to the satisfaction of the RTA or the RTA's Representative that shall accomplish the work in conformance with the requirements of the Contract, except as provided above.

When the Contract or manufacturer's instruction specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized.

8.3 TIME

- A. Contract Time shall be the period of time, measured in calendar days, that is allocated to the Contractor to complete the design and construction Work required by the Contract and to deliver the Vessel one (1) to RTA in New Orleans, Louisiana by March 21, 2018 and in Revenue Service 30 days thereafter and Vessel two (2), 440 days after NTP and in Revenue Service 30 days later in compliance with the

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Contract requirements and for Final Acceptance by the RTA. Time equals the number of days of time stipulated in the Contract at the time of Contract Award as proposed by the Contractor and agreed to by the RTA, plus any additional days of time allocated during the course of the Contract by approved extensions of time, minus any days of time reclaimed by the RTA based upon reductions in the scope or character of the work during the course of the Contract.

The count of time expended shall begin on the date of the Notice to Proceed. The count of time, in conjunction with approved modifications or suspensions of the count of time, shall be the basis for establishing the approved scheduled date of Delivery Acceptance and for assessing liquidated damages associated with untimely Vessels delivery as described in § 8.11. Failure to complete the Work, submit all deliverables, and deliver the Vessels to the RTA within the time may also be an event of default authorizing the RTA to take any steps permitted by § 8.7. See § 3.5 for schedule of deliverables requirements.

B. CHANGE IN THE CONTRACT TIME

1. The Contract Time shall only be changed by a Change Order.
2. Contractor shall include any request for a change in the Contract Time in its Notice of intent to submit a Request for Change Order, Request for Change Order, Change Proposal and Claim.
3. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the sole fault, act, or omission of Contractor, its Subcontractors, Suppliers or anyone for whose acts or omissions the Contractor is responsible.
4. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed and completion of the Contract Work within Contract Time is delayed.
5. RTA agrees to extend the Contract Time for a Vessel for the actual business days of delay caused to construction of such Vessel by the number of business days delay attributable to the following permissible delays:
 - a. changes that RTA initiates pursuant to a Change Order Request that cause a delay, as determined in good faith by Contractor and agreed to by RTA in a Change Order;
 - b. fire, hurricane, windstorm, named storm, accident, war, strike, act of God, excessively cold weather that prevents fairing or painting of the Vessels, or any other cause beyond Contractor's control ("Force Majeure Event");
 - c. RTA's failure to respond to Builder's written request for a decision, Change Order, or other matter requiring RTA's approval within the deadlines set forth for such action herein;
 - d. Delays in delivery of materials and equipment supplied by Contractor's sub-contractors, provided Contractor ordered the

applicable items with appropriate lead time from experienced and reputable vendors or sub-contractors;

- e. Delays in delivery of materials and equipment supplied by third party vendors where RTA is the party responsible for approving the third party vendor and has not accepted alternate vendors proposed by Contractor with faster delivery timeframes;
- f. RTA's or RTA's agents' failure to cooperate in the inspection, application, test, trial or delivery process; or failure to inspect and accept workmanship and materials when requested by Contractor;
- g. Delays attributable to RTA's failure to make payments when due.

6. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:

- a. Be in writing and delivered to the RTA within the appropriate time period specified in Section 6, Changes to the Contract.
- b. Include a clear explanation of how the event or conditions specifically impacted the Critical Path and overall Project Schedule and the amount of the adjustment in Contract Time requested.
- c. Be limited to the change in the Critical Path of a Contractor's Project Schedule, and any updates, attributable to the event or conditions, which caused the request for adjustment.. Contractor shall be responsible for showing clearly on the Project Schedule, and any updates, that the event or conditions:
 - i. Had a specific impact on the Critical Path and was the sole cause of such impact;
 - ii. Could not have been avoided by resequencing of the Work or other reasonable alternatives; and
 - iii. Will prevent the Contractor from completing the Project within the current Contract completion date.
- d. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

8.4

8.5 SUSPENSION OF WORK

A. RTA issues directive suspending work.

1. The RTA may order the Contractor, in writing, to suspend all or any part of the work of this Contract for the period of time that the RTA determines appropriate for the convenience of the RTA. The Contractor shall not suspend the work without written direction from the RTA specifically authorizing the suspension of work.
2. Upon receipt of a written notice suspending the work, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize costs attributable to such suspension. Within a period up to ninety (90) days after the suspension notice is received by the Contractor, or within any extension of that period which the RTA requires, the RTA shall either:
 - a. Cancel the written notice suspending the work; or,
 - b. Terminate the Work for either default or convenience.
3. If a written notice suspending the work is canceled or the period of the suspension or any extension thereof expires, the Contractor shall resume work as required by the RTA.
4. If the performance of all or any part of the work is, for an unreasonable period of time, suspended by the written direction of the RTA, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance reasonably attributable to the suspension, including administrative/overhead costs associated with the suspension of work, and provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by the RTA impacted the critical path and delayed the Contractor from completing the Contract Work on time.

B. Constructive suspension of work.

1. In the event that the Contractor believes that some action or omission on the part of the RTA constitutes constructive suspension of work, the Contractor shall immediately notify the RTA in writing that the Contractor considers the actions or omission a constructive suspension of work. This written notification shall detail the circumstances of the constructive suspension of work.
 2. The Contractor shall keep cost and other project records related to the constructive suspension separately from normal project costs.
- C. To the extent the Contractor believes it is entitled to any additional money or time as a result of the suspension of work or constructive suspension, Contractor shall submit a request for change order to the RTA as more fully described in Section 6, Changes to the Contract. The Contractor shall provide a request for change order within thirty-five (35) days of (1) the RTA's notice canceling the suspension or (2) termination of the work.

1. The Contractor is compensated for overhead, including unabsorbed home office overhead, through the overhead and profit markup described in § 9.9, methods to calculate adjustments to contract price. If the Contractor can demonstrate through verifiable cost records that the overhead and profit markup is insufficient to cover the Contractor's costs for unabsorbed home office overhead, the Contractor may be entitled to additional compensation for unabsorbed home office overhead provided the Contractor demonstrates full compliance with all of the following:
 - a. The Contractor shall demonstrate that the work was suspended solely by actions for which the RTA is entirely responsible.
 - b. The Contractor shall demonstrate that the project's cash flow has been or will be substantially adversely impacted as a direct and sole result of such suspension.
 - c. The RTA required the Contractor to remain on standby during the suspension period;
 - d. The Contractor was unable to re-sequence or reorganize the work in order to continue working and maintain cash flow for the project;
 - e. The Contractor was ready, capable, and willing to perform contract work during the suspension;
 - f. The Contractor was unable to take on other work as a direct result of the suspension and the only reason the Contractor was unable to take on other work was because of the suspension; and
 - g. That the suspension to the project's completion date did not simply result from additional work caused by change orders which did not result in a substantial impact to the project's cash flow.
 2. The Contractor's recovery is limited to actual unabsorbed home office overhead minus the overhead and profit markup calculated in accordance with § 9.9, Method to Calculate Adjustments to Contract Price.
- D. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in contract time and/or contract price.
- E. No adjustment shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its subcontractors.

8.6 FORCE MAJEURE

A. Force Majeure Event.

1. Notwithstanding anything in this Contract to the contrary, neither Party will be liable for any failure of, or delay in, performance of its duties under this Contract

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if, and to the extent that, such failure or delay is caused by an act of God, war (whether or not declared), insurrection, civil commotion, blockade, terrorism, sabotage, piracy, unusually severe weather conditions, tsunami, flood, landslide, earthquake, fire, explosion, epidemic, quarantine restriction, disturbance in supplies from normally reliable sources (including, but not limited to, electricity, water and fuel), strike, lockout, work stoppage, government action or inaction (including non-issuance or delayed issuance of permits if applied for properly and in a timely manner), or any other events beyond such Party's reasonable control ("Force Majeure").

2. Neither Party shall by reason of such force majeure event, have any claim for damages against the other due to such non-performance or delay in performance. Where delay in performance is caused by a force majeure event, the party whose performance is delayed shall be entitled to an extension of time to perform and shall resume performance under this Contract as soon as practicable after such force majeure event has been come to an end or be ceased to exist.

B. Obligations upon the Occurrence of a Force Majeure.

1. The Party whose performance is prevented or delayed by Force Majeure will:
 - a. promptly notify the other Party of the circumstances constituting Force Majeure, including an estimation of its expected duration, the probable impact on the performance of the affected Party's duties hereunder and the intended actions, if any, to be taken to mitigate or remove the effect of the Force Majeure;
 - b. Exercise all reasonable efforts to continue to perform its duties under this Contract, the performance of which is not affected by Force Majeure;
 - c. Exercise all reasonable efforts to mitigate or limit loss or damage to the other Party; and
 - d. Promptly notify the other Party if and when the Force Majeure has ceased to exist.

C. Termination or Extension.

If a Party's performance of this Contract is prevented or delayed by Force Majeure for more than three months, then the Parties will meet and in good faith review whether, and on what conditions, to terminate or extend this Contract.

- D. To the extent the Contractor believes it is entitled to any additional time as a result of force majeure, Contractor shall submit a request for change order to the RTA as more fully described in Section 6, Changes to the Contract.

8.7 DEFAULT OF CONTRACTOR AND RTA'S RIGHT TO TERMINATE CONTRACT FOR CAUSE

- A. RTA may terminate, without prejudice to any right or remedy of the RTA the Work, or any part of it, for cause upon the occurrence of any one or more of the following events of default:
1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure completion of the Work within the Contract Time;
 2. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Final Acceptance of the Work in a timely manner;
 3. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of its insolvency;
 4. Contractor fails in a material way to repair, replace or correct Work not in conformance with the Contract;
 5. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 6. Contractor repeatedly fails to make prompt payment to its employees or Subcontractors;
 7. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;
 8. Contractor fails to comply with all Contract safety requirements; or, Contractor is otherwise in material breach of any provision of the Contract.
- B. If the RTA reasonably believes that one of the aforementioned events has occurred, the RTA may exercise any remedy available under this Contract or at law or equity. In the event RTA provides the Contractor with written Notice of its intent to terminate the Contractor for default, it shall specify within such notice the ground(s) for such termination. The RTA, at its option, shall require the Contractor to either promptly correct the deficiencies noted in the RTA's intent to terminate or provide the RTA with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, the RTA has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the RTA shall thereafter have the right to terminate this Contract for default.
- C. Upon termination, the RTA may at its option and without limiting its other remedies:
1. Upon 48 hours' written notice, RTA may enter upon Contractor's premises and take possession of the Vessels and possession of or use of all materials,

drawings and plans, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and/or,

2. Finish the Work by whatever other reasonable method it deems expedient; or,
 3. Call upon the surety to perform its obligations under the performance and payment bonds, if applicable. The surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the RTA for approval prior to beginning completion of the Work.
- D. The Contractor and its sureties shall be liable for all direct damages and costs, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; and (2) any other reasonable costs or damages incurred by the RTA in completing and/or correcting the Work;
- E. In the event of termination all completed or partially completed plans, drawings, information, or other property including the design of the Vessels for the purpose of completing the Vessels, shall be available to RTA immediately upon request of RTA and Contractor and any design sub-consultants grant to RTA license to use such plans, drawings, information, or other property for the completion of the Work. The RTA may appropriate or use any or all materials and equipment on the ground or in the water as may be suitable and acceptable and may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the RTA are required for the completion of said Contract in an acceptable manner.
- F. In the event of termination for default the Contractor shall not be entitled to receive any further balance of the amount to be paid under the Contract until the Work shall be fully finished, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the expenses incurred by the RTA in finishing the Work and all damages sustained, or which may be sustained by the RTA by reason of such refusal, neglect, failure or discontinuance of prosecution of work, such excess shall be paid by the RTA to the Contractor, but if such expense and damage shall exceed the unpaid balance, the Contractor and its surety and each thereof shall be jointly and severally liable therefore to the RTA, and shall pay the difference to the RTA up to the full amount of the bonds or other contract security implicated. The Contractor shall be liable to the RTA for all amounts that exceed the value of the bonds or other contract security. Notwithstanding the foregoing, the RTA shall only pay the Contractor for Work successfully completed and accepted by the RTA prior to the date of termination. The RTA shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall the RTA reimburse the Contractor for any costs directly or indirectly related to the cause of this termination for default.
- G. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the RTA.

- H. The rights and remedies of the RTA in this provision are in addition to any other rights and remedies provided by law or under this contract.

8.8 TERMINATION FOR CONVENIENCE

- A. Upon written Notice the RTA may terminate the Work, or any part of it, without prejudice to any right or remedy of the RTA, for the convenience of the RTA.
- B. If the RTA terminates the Work or any portion thereof for convenience, Contractor may make a request for adjustment for:
1. Reasonable direct costs for all Work completed prior to the effective date of the termination and not previously paid for by the RTA;
 2. A reasonable allowance for Overhead and profit for Work actually performed and accepted by the RTA prior to the date of termination, at a rate not to exceed the percentage amount set forth in the Contract and in § 9.9, Method to Calculate Adjustments to Contract Price; and,
 3. Actually incurred reasonable administrative costs for "settlement of the Work", i.e., costs directly caused by the termination for convenience, at a rate not to exceed 15% of what the Contractor has been actually paid prior to the date of termination.
- C. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Section 6, Changes to the Contract and § 9.9, Method to Calculate Adjustments to Contract Price.
- D. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the RTA shall not reimburse Contractor any profit for the Work completed and shall reduce the settlement to reflect the indicated rate of loss.

8.9 CONTRACTOR'S OBLIGATIONS DURING TERMINATION

Unless the RTA directs otherwise, after receipt of a written Notice of termination for default or termination for convenience, Contractor shall promptly:

- A. Stop performing Work on the date and as specified in the Notice of termination;
- B. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
- C. Cancel all orders and subcontracts, upon terms acceptable to the RTA, to the extent that they relate to the performance of Work terminated;
- D. Assign as specifically requested by the RTA all of the rights, title, and interest of Contractor in all orders and subcontracts;

- E. Take such action as may be necessary or as directed by the RTA to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which the RTA has an interest;
- F. Continue performance of Work only to the extent not terminated; and,
- G. Take any other steps required by the RTA with respect to this Project.

8.10 THE RTA'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, the RTA may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.
- C. Extension of Time.
 - 1. The RTA may consider requests for extension of time and, if deemed warranted, approve extensions of Contract Time equal to the number of additional days considered by the RTA to be necessary to accomplish approved change work or work associated with RTA-issued directives other than work orders. Work associated with changes and directives, or any portion of such work, which could reasonably be accomplished within the Contract Time, as determined by the approved Contractor's schedule, shall be completed within the established time.
 - 2. The Contractor shall be responsible for promptly requesting extensions of time and for furnishing any and all information necessary to justify each proposed extension to the satisfaction of the RTA. For change work, a request for extension of time shall be considered timely only if the request is included with the Contractor's originally submitted Change Order.
 - 3. 4. Approved change documents and RTA-issued directives which reduce the scope of the Contract or change the character of the work so as to justify a reduction in the amount of time allotted, may result in an agreement between the parties to the Contract, to reduce the number of days of design time or construction time, as applicable.
 - 5. Extensions to Contract Time must be approved in writing by the RTA.
 - 6. A plea that insufficient time was originally specified or otherwise required by the Contract shall not constitute a valid reason for extension of Contract Time.
- D. Suspension of Time.
 - 1. The RTA may, by written order, suspend Work on the Project, in whole or in part, for such periods as he determines to be necessary. RTA shall discuss impact of suspension with Contractor to determine impact on schedule. Unless an item of Work is suspended which is agreed by the RTA to be on the critical path of the Project Schedule, no consideration shall be given to extending the Contract Time or

stopping the count of time during the period of suspension of the Work until an item lands on the critical path.

2. In those instances where the RTA orders suspension of the Work for failure by the Contractor to carry out contractual provisions, the count of time shall continue throughout the suspension period.
3. Suspension of the count of time may be allowed by the RTA because of delays in the completion of the Work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and extraordinary weather or delays of subcontractors due to such causes provided that the Contractor shall, within 10 calendar days of the beginning of any such delay, notify the RTA in writing of the cause of delay and request suspension of the count of time. The RTA shall ascertain the facts and the extent of the delay and the parties shall agree upon the number of days that justify such suspension.
4. Suspension of Work by the RTA or delays in the completion of the Work shall not constitute grounds for any claims by the Contractor for damages or extra compensation unless otherwise provided for in the Contract.

E. Suspensions of Work Ordered by the RTA.

1. If the performance of all or any portion of the Work is suspended or delayed by the RTA in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the shipbuilding industry) and the Contractor believes that additional compensation and/or time is due as a result of such suspension or delay, the Contractor shall submit to the RTA in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment. Upon receipt, the RTA shall evaluate the Contractor's request. If the RTA agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the RTA shall make an adjustment including reasonable profit and modify the Contract in writing accordingly. The RTA shall notify the Contractor of its determination whether or not an adjustment of the Contract is warranted.
2. No Contract adjustment shall be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
3. No Contract adjustment shall be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

8.11 FAILURE TO DELIVER ON TIME

- A. For each calendar day a Vessel remains undelivered after the scheduled Delivery Acceptance of that Vessels, the sum of \$1,000.00 per day shall be deducted from any monies due the Contractor. If no money is due the Contractor, the RTA shall have the right to recover said sum from the Contractor, the surety or both. The amounts of these deductions are to cover estimated expenses to the RTA as a result of the Contractor's failure to complete the work within the time specified. Such deductions are liquidated damages and are not to be considered as penalties.
- B. Liquidated damages associated with untimely delivery of the Vessels shall be charged at \$1,000.00 per day against the Contractor's account by the RTA beginning the day after March 1, 2018 for Vessel one (1) the scheduled Delivery Acceptance date and ending on the actual Delivery Acceptance date of the Vessels. The scheduled Delivery Acceptance date will be included in the count of days chargeable to liquidated damages. The day of actual Delivery Acceptance will stop the accrual of liquidated damages associated with untimely delivery and will not be included in the count of days chargeable to liquidated damages.
- C. Notwithstanding any other provision of this Contract to the contrary, the liquidated damages provided for in this subsection shall be the RTA's sole and exclusive remedy for all damages incurred by reason of the Contractor's failure to deliver the Vessels on time.
- D. The scheduled Delivery Acceptance date of the Vessels shall be March 1, 2018 the date by which all contracted work is scheduled to be completed for the first Vessels, excluding any work that may be necessary to correct deficiencies arising during the Warranty Period subsequent to actual Delivery Acceptance (see below). The scheduled Delivery Acceptance date of the Vessels shall be the number of days of construction time allocated and calculated in accordance with § 8.3, and any days of approved suspension of construction time, after Notice to Proceed.
- E. The actual Delivery Acceptance date shall be the date on which the RTA signs the letter of Delivery Acceptance of the Vessels (see § 3.21) and takes custody of the Vessels from the Contractor. The actual Delivery Acceptance Date for the Vessels shall be the start date for the count of time for the Warranty Period (see § 3.26) for the Vessels.
- F.
- G. Permitting the Contractor to continue and finish the Work, or any part of it, after the scheduled Delivery Acceptance, as approved by the RTA, shall in no way operate as a waiver on the part of the RTA of any of its rights under this Contract.

SECTION 9. MEASUREMENT AND PAYMENT

9.1 GENERAL

Wherever it is provided in the Contract that certain Work is a subsidiary obligation or it is stated that certain provisions or Work is without extra compensation or at the Contractor's expense: it is understood in those cases that the Contractor's compensation for such work is included in the payment provided for in the Contract prices as set forth in the Price Proposal.

9.2 MEASUREMENT OF QUANTITIES

All work completed under the Contract will be measured according to the United States standard measure.

9.3 SCOPE OF PAYMENT

- A. The Contractor shall receive and accept compensation provided for in the Contract Price as full payment for providing the design; furnishing all materials, installed equipment, labor, and construction equipment; and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.
- B. In the event that any item of Work is to be done for a unit price, the unit price will be the sole compensation due the Contractor for all labor, services and material required to produce the item of Work including overhead and profit, and payment for such labor, services or material will not be duplicated by payment pursuant to any other provision of the Contract.
- C. The term "lump sum," when used as a basis for payment, shall mean full payment in US Dollars for the work described in the Contract, including all necessary fittings and accessories. The procedures described in this section for extra work, material, progress and final payment apply to the lump sum items in this Contract.
- D. In the event the Vessels being constructed in accordance with the Contract is damaged during construction prior to acceptance by the RTA, if the repair of such damage will require more than 40 man hours or more than \$2000 for subcontractor or materials, the repair of the damage shall be accomplished only in accordance with a repair specification that is agreed upon in advance of such repair by RTA and Contractor. If the effective total cost of repair exceeds one-third of the price for the Vessels, the Vessels shall no longer be considered new, and thus cannot be delivered to the RTA as a new Vessels; but solely at the option of the RTA, may be accepted as a not-new Vessels at a negotiated reduced price.

9.4 PROGRESS PAYMENTS

9.4.1 APPLICATIONS FOR PAYMENT

- A. In accordance with the attached Milestone Payment Schedule (Appendix X), the Contractor shall submit to the RTA an Application for Payment. Each application

shall be on a form acceptable to the RTA and designated as an "Application for Payment." The Contractor shall include with each Application for Payment:

1. Current status of construction in relation to the Milestone Payment Schedule. Each Application for Payment shall include a Progress Estimate reflecting physical progress, by item as per the Schedule or in an approved work breakdown structure format. No Application for Payment will be considered until the current status of construction has been submitted and accepted.
 2. Each Progress Estimate is to be accompanied by an updated Project Schedule that substantiates, by item and in total, the percentage complete shown in the Progress Estimate. Summary activities in the Progress Estimate are to correspond to the summary activities in the Project Schedule. The percentages of completion shown in the summary activities are to be derived from the updates to individual schedule activities.
 3. The contract purchase order number shall be placed on each Application for Payment submitted by the Contractor to the RTA.
 4. As a precondition to each Payment, the Contractor shall also submit a Release of Claims Certification, in a format approved by the RTA, releasing the RTA from all claims (including subcontractor claims) for additional Contract Time or Price which has not previously been timely identified in writing pursuant to the procedures of the Contract.
- B. Inclusion of the required documentation is a condition precedent to payment. The Contractor is not entitled to payment for any work unless the Application for Payment includes all required documentation. The RTA reserves the right to withhold payment pursuant to § 9.4.3, Payments Withheld; if it is subsequently determined that all required documentation was not provided by the Contractor.
- C. The application shall correlate the amount requested with the Milestone Payment Schedule and with the state of completion of the Work, as measured by the current Project Schedule. In addition to Work performed by the Contractor, applications may include (1) the invoiced cost of major materials or equipment suitably stored on the Site, and (2) with the RTA's consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the RTA's interest in those major materials or equipment is protected through insurance and the Contractor provides documentation of such insurance.

9.4.2 PAYMENTS

- A. The RTA shall promptly review each Application for Payment and identify in writing any cause for disapproval within 20 working days. In addition to withholding payment for unsatisfactory performance or failure to comply with Contract requirements, if the Contractor's Application for Payment fails to recognize any back-charges, off-sets, credits, change orders, or deductions in payment made in accordance with § 9.4.3, Payments Withheld, the RTA shall have the right to revise or disapprove Contractor's Application For Payment because the Application For Payment is not considered a properly completed invoice.

- B. The RTA may utilize a submitted Application for Payment or at its sole discretion, may make an independent estimate of physical percentage of completion of the Contract, and may authorize payment on either basis. The RTA's use of Contractor-submitted Progress Estimates or independent estimates shall solely be for the purpose of establishing the value of progress payments and shall not be evidence of the actual percentage of completion or otherwise bind the RTA.
- C. The RTA may allow a minor redistribution of costs in the Milestone Payment Schedule to more accurately reflect the costs. Any redistribution of costs is at the discretion of the RTA and will not be allowed without backup documentation from the Contractor demonstrating a clear and rational necessity for the redistribution. A redistribution of costs will not result in an acceleration of the payments made to the Contractor beyond the originally agreed upon Milestone Payment Schedule unless specifically permitted in writing by the RTA.
- D. If an Application for Payment is accepted by the RTA, it shall be paid within thirty (30) days of the RTA's receipt of the properly prepared invoice (Application for Payment). Any amount due hereunder that is not paid when due shall bear simple interest at a rate of 1.0% per month, with interest pro-rated on a daily basis from the date the payment is due until it is paid in full. If any invoice shall become more than sixty (60) days overdue, Contractor may, in its discretion, suspend or reschedule any or all of the construction work (such right being in addition to any other right exercisable by Contractor under this Agreement, in equity or under applicable law, including, but not limited to, termination of the contract), and RTA shall then be obligated to Contractor, in addition to other amounts becoming due hereunder, for any direct costs resulting from the suspension or rescheduling of the construction work. These costs may include cancellation charges on any materials orders or sub-contracts as well as any increases in costs when materials are re-ordered or new sub-contracts are negotiated.
- E. The Contractor shall ensure that Subcontractors [and Suppliers] are promptly paid to the fullest extent required by RTA's Prompt Payment, as may be amended.

9.4.3

9.4.4 RETAINAGE

- A. Five percent (5%) of the value of each contractor invoice for Construction only shall be withheld until final completion and acceptance of all work, as determined by the RTA.
- B. Claims or "liens" by Subcontractors and Suppliers against the retained fund or the retainage bond must be in writing and submitted to the Project Representative at the address given for notices in this Contract, for filing with the Project documents. The RTA's Representative will maintain a copy of all claims "liens" against the retainage in the Project document files.
- C. The RTA will notify the Contractor in writing at least five calendar days before issuing a progress payment that includes new retainage and will cite the reason for the impending new retainage in the notice. Re-notification concerning retainage amounts

associated with a previous progress payment will not be provided in conjunction with subsequent progress payments.

9.5 PAYMENT FOR MATERIAL ON HAND

- A. Payment may be made for materials, inclusive of equipment to be permanently installed, meeting the applicable specifications and stockpiled on the project or stored in acceptable storage facilities off the limits of the project for future incorporation into the work. Payment for such materials will be at the discretion of the RTA, who may decline to make payment until the materials are determined to be acceptable by the RTA for incorporation into the work.
- B. Payment for materials on hand will not be made unless requested in writing by the Contractor, and accompanied by the proper documentation including, but not limited to, receipts of paid invoices. The Contractor's request must include a certification that the materials meet the applicable Contract specifications, a summary of the items stockpiled, the quantity of each and the stockpile location(s), or add on items of a value of \$50,000 or greater, all of which shall be verified by the RTA prior to acceptance for payment. In no case shall payment be considered without receipt of paid invoice and proof of shipment insurance.
- C. Upon making payment for material on hand, LADOTD is granted title to such material. Title must be free and clear of all encumbrances. Contractor bears the risk of loss or damage to the material, even though LADOTD holds title, until Final Acceptance of the Vessels.
- D. Payment for materials purchased by the Contractor may be made to the extent of the delivered cost as evidenced by copies of invoices and freight bills, along with other information the RTA may require.
- E. Materials produced by the Contractor may be included in the payment for materials on hand provided the materials pass the applicable specifications. Quantities may be based on production statements submitted by the Contractor and approved by the RTA.
- F. No payment will be made for stockpiled perishable materials that could be rendered useless because of long storage periods.
- G. Payment for materials on hand will not constitute final acceptance. It shall be the Contractor's responsibility to protect the material from damage or loss while in storage.
- H. Stockpiled materials payments will be made on the pay estimate following receipt of the Contractor's request and all required documentation. Deductions will be made from stockpiled materials quantities appearing on the estimate as the materials are incorporated into the work.
- I. This subsection shall apply only when the total value of materials on hand for which payment is sought is in excess of \$50,000.

- J. The RTA shall require replacement for materials on hand which are subsequently damaged or otherwise determined by the RTA to be unsuitable for incorporation in the work. This provision shall apply whether or not the materials are already installed at the time of the determination.

9.6 FINAL ACCEPTANCE AND FINAL PAYMENT

- A. Final Acceptance of the work shall be withheld until the Contract Work is complete with all associated liabilities reconciled to the satisfaction of the LADOTD and the Contractor furnishes all certificates, guarantees, releases, affidavits, etc., required by these provisions or elsewhere in the Contract.
- B. When the project has been finally accepted as provided in § 4.12, the RTA will prepare the final estimate of the work performed. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.
- C. If the Contractor concurs with the estimate, or if it files no claim within thirty (30) calendar days of receiving the final estimate, the estimate shall be processed for final payment. After concurrence regarding such final estimate by the Contractor, he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be deducted under the provisions of the Contract.
- D. The written acceptance of the final estimate by the Contractor shall constitute acceptance of the total amount shown as payment in full for the amount due him under the Contract. The Contractor's written acceptance, however, preserves any claims timely filed in accordance with the terms of the Contract prior to the signing of the final estimate by the Contractor. Any timely filed claims must be listed as exceptions to the final estimate by the Contractor. Any claims listed as exceptions on the final estimate that have not been timely filed (as provided under the terms of the Contract) prior to the signing of the final estimate by the Contractor will be considered null and void. Any claims timely filed under the terms of the Contract and not listed as exceptions on the final voucher shall be considered null and void and not subject to further consideration or legal action.
- E. If the Contractor fails or declines to accept the final estimate within thirty (30) calendar days and files no claim, the RTA will consider the estimate accepted and process the estimate for final payment.
- F. Once the final estimate assembly has been executed by both parties and all claims, if any, have been settled, the Contractor shall furnish the RTA with a "Release on Contract," which releases the RTA from all claims in connection with the Contract.
- G. If the Contractor's claim to amounts payable under the Contract has been assigned, a release may also be required of the assignee.
- H. The Contractor shall furnish the RTA with all warranties, including manufacturer's warranties, specified in the RTA's Requirements, Specifications and General Conditions, and submit them to the RTA at Final Acceptance.

9.7 LIQUIDATED DAMAGES FOR OTHER THAN FAILURE TO DELIVER ON TIME

- A. The parties agree that certain deficiencies identified as a result of tests or trials provided for in the Specifications shall result in the payment by the Contractor to the RTA as liquidated damages (and not as a penalty).
- B. Contractor's total liability for liquidated damages for other than failure to deliver on time shall be capped at 5% of the Contract Price.

9.8 CHANGE IN THE CONTRACT PRICE

- A. The Contract Price shall only be changed by a Change Order.
- B. Contractor shall include any request for a change in the Contract Price in it's:
 - 1. Change Proposal;
 - 2. Notice of intent to submit a Request for Change Order;
 - 3. Request for A Change Order; and
 - 4. Claim, provided the related Request for Change Order and/or Change Proposal included request to adjust the Contract Price.
- C. No change in the Contract Price shall be allowed when:
 - 1. Contractor's changed cost of performance is due to the sole fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible;
- D.

9.9 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE

- A. One of the following methods shall be used to calculate damages and/or adjustments to the Contract Price that result from or relate to Change Proposal, Request for Change Order, and/or Claim.
- B. Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of the RTA.
- C. One of the following methods shall be used:
 - 1. Unit Price Method;
 - 2. Firm Fixed Price Method (also known as Lump Sum); or,
 - 3. Time and Materials Method.
- D. **Unit Price Method**

1. Whenever the RTA authorizes Contractor to perform Work on a Unit Price basis, the RTA's authorization shall clearly state the:
 - a. Scope of work to be performed;
 - b. Applicable Unit Price; and,
 - c. Not to exceed amount of reimbursement as established by the RTA.
2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including Overhead and profit.
3. Contractor shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by the RTA.

E. Firm Fixed Price Method

1. The Contractor and RTA may mutually agree on a fixed amount as the total compensation for the performance of changed work.
2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Project Representative.
3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such Overhead and profit shall be calculated in accordance with § 9.9.F.4.e, Overhead and Profit Markup.
4. Whenever the RTA authorizes Contractor to perform changed work on a Firm Fixed Price Method, the RTA's authorization shall clearly state:
 - a. Scope of Work to be performed; and,
 - b. Total Fixed Price payment for performing such work.

F. Time and Materials Method

1. Whenever the RTA authorizes the Contractor to perform Work on a Time and Material basis, RTA's authorization shall clearly state:
 - a. Scope of Work to be performed; and,
 - b. A not to exceed amount of reimbursement as established by the RTA.
2. Contractor shall:
 - a. Cooperate with the RTA and assist in monitoring the Work being performed;

- b. Substantiate the labor hours, materials and equipment charged to work under the Time and Materials Method by detailed time cards or logs completed on a daily basis before the close of business each working day;
 - c. Present the time card and/or log at the close of business each day to the RTA's Representative so that the RTA may review and initial each time card/log;
 - d. Perform all Work in accordance with this provision as efficiently as possible;
 - e. Not exceed any cost limit(s) without the RTA's prior written approval; and
 - f. Maintain all records of the work, including all records of the Subcontractor, Supplier, and Materialmen, and make such records available for inspection as required in provisions 3.25.1, Record Documents, 3.25.2, Cost Records, and 3.25.3, Maintenance and Inspection of Document.
3. Contractor shall submit costs and any additional information requested by the RTA to support Contractor's requested price adjustment.
4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If the RTA determines that the Contractor's costs are excessive or unreasonable, the RTA, at its discretion, shall determine the reasonable amount for payment. Any adjustments to the Contract Price using the Time and Materials method shall be based on the following categories and shall incorporate markups for Overhead and profit as provided herein.
- a. **Labor.** For all labor, including foreman supervision but excluding superintendents, the Contractor shall be reimbursed for labor costs provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:
 - i. **Labor Rate.** The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUCA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification because of the event or condition to arrive at a total cost of labor.
 - ii. **Travel Allowance and/or Subsistence.** The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged upon the Work when said payments are required by a labor agreement.
 - b. **Materials.** The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at the RTA's election:

- i. **Invoice Cost.** The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges, notwithstanding the fact that they may not have been taken by the Contractor. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the RTA. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as the RTA may reasonably require;
 - ii. **Wholesale Price.** The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or,
 - iii. **RTA Furnished Material.** The RTA reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials.
- c. **Equipment.** The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:
- i. **Equipment Rates.** The Contractor's own charge rates may be used if verified and approved by the RTA and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, published by Equipment Watch, PRIMEDIA, whichever is less. The Rental Rate Blue Book established equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.
 - ii. **Transportation.** If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.

- iii. **Standby.** The Contractor shall only be entitled to standby equipment costs if (a) the equipment is ready, able, and available to do the Work at a moment's notice; (b) Contractor is required to have equipment standby because of an event or condition solely caused by the RTA and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. The Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of PRIMEDIA Information Inc. Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.
- d. **Subcontractor & Supplier.** Direct costs associated with Subcontractors and Suppliers shall exclude overhead and Profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.
- e. **Overhead and Profit Markup.**
 - i. On a change to the Contract Price or any other claim for money by the Contractor, the RTA will only pay Overhead, including Home Office Overhead, Site or Field Office Overhead, and unabsorbed home office overhead, and Profit pursuant to the Overhead and Profit Markups set forth herein. The Overhead and Profit Markups cover all overhead regardless of how the Contractor chooses to account for various costs in its books of account.
 - ii. Overhead and Profit markups shall not be applied to Freight, delivery charges, express charges, and sales tax.
 - iii. The allowed Overhead and Profit markup shall not exceed the following:
 - 1. If the Contractor is self-performing work: 20% combined Overhead and Profit markup on the Contractor's Direct Costs; or
 - 2. If a Subcontractor or Supplier is performing work: 18% for the Subcontractor's Direct Cost for performing the work and 7% on the Direct Costs of the Subcontractors' or Suppliers'; provided that the 7% is to be divided among upper tier Subcontractors and the Contractor when a Subcontractor or Supplier is performing the work.

3. If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and Profit Markup shall only be 10% for material and equipment.
 4. In no event shall the total combined Overhead and Profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the Direct Cost to perform the Change Order work.
- iv. Direct Costs shall include Labor (as defined in § 9.9.F.4.a), Materials (as defined in § 9.9.F.4.b), Equipment (as defined in § 9.9.F.4.c), and Subcontractor and Supplier Costs (as defined in § 9.9.F.4.d).

G. Full Compensation

An adjustment calculated in accordance with the provisions of this Section shall be full and complete payment and final settlement of all changes, claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, standby, and/or any other costs or damages related to any Work either covered or affected by the changed work, or related to the events giving rise to the change.

9.9.2 Performance Items and Liquidated Damages

The RTA shall apply liquidated damages for deficiencies in the following areas:

Speed:

If the actual service speed of the Vessels is less than 18 knots in Trial Conditions then it shall constitute noncompliance with the Contract and RTA may reject the Vessels. Liquidated damages may be imposed in the amounts set forth in the table below for each increment that the Vessels' actual service speed is less than 20 knots in Trial Conditions.

Service Speed at Trails	Liquidated Damages	Total Assessed
20.0	\$0	\$0
19.9	\$10,000	\$10,000
19.8	\$10,000	\$20,000
19.7	\$10,000	\$30,000
19.6	\$10,000	\$40,000
19.5	\$10,000	\$50,000
19.0	\$25,000	\$75,000

18.5	\$25,000	\$100,000
18.0	\$25,000	\$125,000

Noise Emissions:

Noise emissions shall not exceed the levels set forth in the table below.

NOISE LEVEL		dB (A)	
DECK	ZONE	DOCKSIDE ¹	UNDERWAY ²
MAIN DECK	FORWARD INTERIOR	67	70
	AFT INTERIOR	67	73
	HEADS	70	75
	AFT EXTERIOR ³	75	83
2 ND DECK	PILOTHOUSE	65	65
	AFT EXTERIOR ³	75	83

Notes:

1 – Dockside conditions – main engines at idle, one SSDG online, full HVAC at normal settings, engine room supply/exhaust fans on

2 – Underway conditions – at all throttle settings, from idle to max RPM, one SSDG online, full HVAC at normal settings, engine room supply/exhaust fans on

3 – Aft Exterior dB (A) readings – taken in areas where apparent wind is less than 10 kts.

Commencing upon a deficiency of 1 dB above the level depicted, the Contractor shall pay liquidated damages for each decibel (starting at 1 dB above the threshold) in excess of noise levels exceeding the criteria per zone, dockside or underway, as follows:

For 1 dB above the requirement, a total sum of US Dollars \$15,000.

For 2 dB above the requirement, a total sum of US Dollars \$30,000.

For 3 dB above the requirement, a total sum of US Dollars \$45,000.

For 4 dB above the requirement, a total sum of US Dollars \$60,000.

For 5 dB above the requirement, a total sum of US Dollars \$75,000.

If the Vessels noise performance criteria characteristics are more than 5 dB above the standard depicted in any zone, then Vessels' noise emission characteristics shall constitute noncompliance with the Contract and the RTA may reject the Vessels.

Vibration:

Vibration levels shall comply with the requirements of ABS Class Notation 'COMF' as defined in Section 2 – Whole Body Vibration, of ABS Pub 103 – Guide For Passenger Comfort on Ships (Revise, 2015), specifically Table 1. The measurement of vibration

levels shall be determined by following the methodology outlined and defined in ABS Pub 103.

If the Vessels vibration performance criteria characteristics exceed the standard depicted in Table 1, then Vessels' vibration characteristics shall constitute noncompliance with the Contract until the contractor remedies the deficiencies.

Wake Wash:

Maximum wake wash height and wake wash energy as identified below shall be measured by a qualified third party at a distance of 300 meters from the sailing line while operating at Service Speed under Trial Conditions.

Wake Wash Height	28 cm
Wake Wash Energy	1000 Joules per meter

If either of the wake characteristics above are exceeded it shall constitute noncompliance with the Contract until the Contractor remedies the deficiencies.

MSB Liquidated Damages

Wake Wash Height

Height (cm)	LD's	Total
>29	\$5,000	\$5,000
>30	\$7,500	\$12,500
>31	\$10,000	\$22,500
>32	\$15,000	\$37,500
>33	\$20,000	\$57,500
>34	\$30,000	\$87,500
>35	\$40,000	\$127,500
>36	Nonconforming	

Wake Wash Energy

Energy (J)	LD's	Total
>1000	\$20,000	\$20,000
>1100	\$20,000	\$40,000
>1200	\$25,000	\$65,000
>1300	\$25,000	\$90,000
>1400	\$30,000	\$120,000
>1500	\$30,000	\$150,000
>1600	Nonconforming	

10. CLAIMS AND LITIGATION

10.1 NOTICE OF ANY ACT OR OCCURRENCE THAT MAY FORM BASIS FOR A CLAIM

If the Contractor becomes aware of any act or occurrence which may form the basis of a claim by the Contractor for additional compensation or an extension of time for performance, or if any dispute arises regarding a question of fact or interpretation of the Contract, the Contractor shall, within fifteen (15) calendar days of learning of such act or occurrence, provide written notice to the RTA.

If the Contractor believes additional compensation or an extension of contract time is warranted, the Contractor shall immediately begin to keep and maintain complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The Contractor shall give the RTA access to any such records and, when so requested, shall forthwith furnish the RTA copies thereof at the Contractor's expense. Equipment costs for owned equipment for ownership, depreciation, and operating expense shall be the lowest of the actual cost, internal rates, or published rental rates.

10.2 PROTESTS

10.2.1 Surveyor. The parties shall promptly submit any and all disputes regarding the performance of this contract, including, but not limited to, disputed technical issues relating to the construction of the Vessels, which cannot be resolved by the parties, to the Surveyor, Joe Komer of Ship Architects, Inc., to resolve the matter, and the parties shall be bound by the Surveyor's decision. If, however, the Surveyor fails or refuses to decide the issue, the dispute shall be referred to arbitration as hereinafter provided. The pendency of a dispute with the Surveyor shall not alone justify extension of the Delivery Date; provided, however, that if a matter referred to the Surveyor occasions a delay in construction or delivery of the Vessels, the Surveyor shall also determine if an extension of the Delivery Date is warranted. Regulatory requirements shall be excluded from this process and are the responsibility of the Builder to resolve to the RTA's satisfaction prior to delivery of each Vessel.

10.2.2 Arbitration. Except as provided in Section 10.2.1 of this Agreement with respect to technical issues, the parties shall submit to arbitration any dispute arising under this Agreement during the course of construction of the Vessels and during the Limited Warranty Period for each Vessel. Either party may initiate arbitration by sending written notice to the other of its election to arbitrate and specifying the dispute to be arbitrated. Within five (5) business days after receipt of a notice to arbitrate a dispute, Contractor and the RTA shall each appoint an arbitrator, and within five (5) business days thereafter the two (2) appointed arbitrators shall select a third arbitrator. All arbitrators shall be impartial and unrelated, directly or indirectly, by employment or otherwise, to either of the parties or to any person directly or indirectly related to the parties.

The arbitrators shall have substantial knowledge and experience in matters related to construction of vessels.

10.2.3 Hearings. The three (3) arbitrators shall hold hearings at which the parties may present evidence and arguments, be represented by counsel, and conduct cross-examination. All arbitration hearings shall be held at a place designated by the arbitrators in New Orleans, LA. The three (3) arbitrators shall commence the first such hearing within (10) business days of the selection of the last arbitrator and shall render a written decision upon the matter presented to them by a majority vote within fifteen (15) business days after the date upon which the last arbitrator is appointed. The arbitration panel's decision or award shall be final and binding on the parties, and the parties hereby waive the right to appeal an arbitral decision or award. The arbitrators shall be bound by the provisions of this Agreement, including its Exhibits, and shall have no authority to alter any provision in any way. Any decision, award, or remedy that is in contravention of the limitations of this Agreement including the limitations on consequential damages, punitive damages, liquidated damages, and Limited Warranty, shall not be binding on the parties hereto. Judgment on any decision or award may be entered in any court of competent jurisdiction. The parties and the arbitrators shall use their best efforts to conclude the hearing within ten (10) business days.

10.2.4 Procedure. The arbitrators selected hereunder shall agree to observe the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the American Arbitration Association ("AAA") and the American Bar Association, or any successor code, and shall take an oath of impartiality. If necessary, the parties shall advance on an equal basis any costs of the arbitration, such as reporter's fees and arbitrator's fees. The prevailing party shall be entitled to recover as part of the award all such advanced costs and reasonable, not actual, attorneys' fees and related costs, including expert witness fees and costs, and any other reasonable costs, fees or expenses of the arbitration. In the event of any dispute over any such fees and costs, each party may apply to the arbitrators within thirty (30) days of the award on the merits for entry of an award of fees and costs without a hearing, but with consideration of any factual material or brief submitted by a party, and such award shall be paid within thirty (30) days from the date the award is granted.

10.2.5 Suspension of Default. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to a disputed default, and if found in default by the arbitration panel, shall be given ten (10) days from receipt of the arbitration award to cure the default. The pendency of arbitration proceedings shall not justify extension of the Delivery Date unless: (i) Contractor prevails, and (ii) the arbitration panel, at Contractor's request, finds that an extension is justified and then only for the number of business days the arbitration panel so determines. Notwithstanding the foregoing, if during the arbitration the RTA has failed to make payments when due under this Agreement, Contractor shall be entitled to suspend performance of the construction work, extend the Delivery Date and exercise any other remedy available to it under this Agreement. Following the end of the period of time during which disputes are resolved through arbitration.

10.3 ORAL STATEMENTS

All changes to this Contract shall be in writing and in accordance with the requirements of Section 6, Changes to the Contract. No oral statements of any person shall, in any manner or degree, modify or otherwise affect the terms of this Contract.

10.4 CONTRACTOR'S CERTIFICATION

Conflict of Interest

Consistent with the Regional Transit Authority, the Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to the RTA and take action immediately to eliminate the conflict or to withdraw from this Contract, as the RTA may require.

Contingent Fees and Gratuities

The Contractor, by entering into this Contract with the Regional Transit Authority to perform or provide work, services or materials, has thereby covenanted:

That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee may be paid; and, the Louisiana Department of Transportation and Development, the Regional Transit Authority or Transdev.

That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of the Regional Transit Authority or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with the Regional Transit Authority and it has disclosed to the Regional Transit Authority all attempts by any person to solicit such payments.

Penalties

Violations as permitted by State or local law or regulations, the Recipient agrees and assures its Sub-recipients will agree that:

- (a) Its Code or Standards of Conduct will establish:
 - 1 Penalties,
 - 2 Sanctions, or

- 3 Other disciplinary actions for violations, and
- (b) It will apply those penalties, sanctions, or other disciplinary actions for violations of its Code or Standards of Conduct by:
 - 1 The Recipient or Sub recipient's officers,
 - 2 The Recipient or Sub recipient's employees,
 - 3 The Recipient or Sub recipient's board members,
 - 4 The Recipient or Sub recipient's agents,
 - 5 The Recipient or Sub recipient's immediate family members,
 - 6 The Recipient or Sub recipient's Third Party Participants,

Authorizes criminal liability, and civil penalties, including the cancellation of current contracts and disqualification from bidding for a two-year period for any person violating Codes or Standards of Conduct.

10.5 GOVERNING LAW; VENUE

The Parties hereby agree that:

- A. This Contract was made and entered into in the State of Louisiana and requires the Vessel one (1) to be delivered at New Orleans, Louisiana by March 1, 2018, and Vessel two(2) to be determined.
- B. The law of Louisiana shall govern the resolution of any issue arising in connection with this Contract, including all questions concerning the validity of this Contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties hereunder.
- C. Venue for any action relating to this Contract shall be in the Orleans Parish Civil District Court of the State of Louisiana in New Orleans, Louisiana.